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Part 4 Warranties

Division 1 Incorporation of warranties

41 Implied warranties

- (1) The warranties mentioned in division 2 are part of every regulated contract.
- (2) A warranty mentioned in a section of division 3 is part of each regulated contract that is a contract of the type to which the section applies.

Division 2 Implied warranties for all contracts

42 Suitability of materials

- (1) The building contractor warrants that all materials to be supplied for use in the subject work—
 - (a) will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used; and
 - (b) unless otherwise stated in the contract, will be new.
- (2) Subsection (1) applies to the building contractor for materials only if the materials are supplied by the responsible person for the contract.
- (3) Despite subsection (2), if the contract is being administered by an architect engaged by the building owner, subsection (1) does not apply to the building owner for materials if the responsible person is subject to the direction of the architect for supplying the materials.
- (4) Also, despite subsection (2), subsection (1) does not apply to the building contractor for materials if—
 - (a) the building owner is responsible for nominating the materials for use in the subject work; and

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- (b) either—
- (i) there are no reasonable grounds for not using the materials; or
 - (ii) if there are reasonable grounds for not using the materials—the building owner insists on the materials being used despite written advice to the contrary given to the building owner by the building contractor.
- (5) A building owner is responsible for nominating materials for use in the subject work only if—
- (a) the building owner nominates the materials specifically; and
 - (b) the nomination is made without any recommendation, representation, suggestion or other approach being made to the building owner by the building contractor—
 - (i) supporting, or approving, the use of the materials; or
 - (ii) criticising, or disapproving the use of, other materials that could be considered to be appropriate for use for the purpose for which the materials nominated by the building owner are to be used.
- (6) In this section—
- relevant criteria***, for materials, means—
- (a) generally accepted practices or standards applied in the building industry for the materials; or
 - (b) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
- responsible person***, for a regulated contract, means—
- (a) if the contract is a contract for carrying out the subject work—the building contractor; or

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- (b) if the contract is a contract for managing the carrying out of the subject work—the person responsible for carrying out the work.

43 Compliance with legal requirements

The building contractor warrants the subject work will be carried out in accordance with all relevant laws and legal requirements, including, for example, the *Building Act 1975*.

44 Standard of work and exercise of care and skill

The building contractor warrants the subject work will be carried out—

- (a) in an appropriate and skilful way; and
- (b) with reasonable care and skill.

Division 3 Implied warranties for particular contracts

45 Adherence to plans and specifications

- (1) This section applies to a regulated contract if plans and specifications form part of the contract.
- (2) The building contractor warrants the subject work will be carried out in accordance with the plans and specifications.

46 Suitability of premises for occupation

- (1) This section applies to a regulated contract if the subject work—
 - (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or
 - (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.

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- (2) The building contractor warrants the detached dwelling or home will be suitable for occupation when the work is finished.

47 Carrying out work with reasonable diligence

- (1) This section applies to a regulated contract if—
- (a) the contract is a cost plus contract; and
 - (b) the contract does not have a stated completion date or period.
- (2) The building contractor warrants the subject work will be carried out with reasonable diligence.

48 Calculation of provisional sums

- (1) This section applies to a regulated contract providing for a provisional sum.
- (2) The building contractor warrants the provisional sum has been calculated with reasonable care and skill, having regard to all the information reasonably available when the contract is entered into (including information about the nature and location of the building site).

Division 4 General

49 Warranties run with building

- (1) An associated person for a regulated contract has the same rights for a breach of a warranty mentioned in division 2 or section 45 or 46 as if the person were the building owner.
- (2) However, subsection (1) applies to the associated person—
- (a) only if, at the relevant time, the person did not know, and could not reasonably have known, of the existence of the breach; and

71 Rights of building contractor if contract ended

- (1) This section applies if a building owner ends a regulated contract under section 70.
- (2) The building contractor is entitled to receive a reasonable amount for the contracted services provided to the time the contract is ended.
- (3) However, the building contractor is not entitled to receive an amount that is more than the amount the building contractor would have been entitled to receive under the contract.

Part 6 Cooling-off period

72 Right of building owner to withdraw from contract in cooling-off period

- (1) The building owner under a regulated contract may withdraw from the contract under this section.
- (2) The building owner may withdraw from the contract within 5 business days after the receipt day for the contract.
- (3) If 5 business days have elapsed since the contract was entered into and there is no receipt day for the contract, the building owner may withdraw from the contract.
- (4) Nothing in subsection (3) affects the right of the building owner to withdraw from the contract under subsection (2) if a receipt day subsequently applies to the contract.
- (5) In this section—
receipt day, for a regulated contract, means—
 - (a) the day on which the building owner receives the following documents from the building contractor—
 - (i) a copy of the signed contract;
 - (ii) a copy of the appropriate contract information statement for the contract; or

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- (b) if the documents mentioned in paragraph (a) are received by the building owner from the building contractor on different days—the later of the days.

73 Restrictions affecting right of withdrawal in cooling-off period

- (1) This section applies despite section 72.
- (2) A building owner may not withdraw from a regulated contract (the *current contract*) under section 72 if—
 - (a) the building owner and building contractor previously entered into a regulated contract (the *previous contract*); and
 - (b) the terms of the previous contract and current contract are substantially the same; and
 - (c) the contracted services for the previous contract and current contract—
 - (i) are substantially the same; and
 - (ii) relate to the same detached dwelling, home or land.
- (3) Also, a building owner may not withdraw from a regulated contract under section 72 if—
 - (a) before entering into the contract, the building owner received formal legal advice about the contract; or
 - (b) when, or after, the contract is entered into, the building owner tells the building contractor that the building owner received formal legal advice about the contract before entering into the contract.
- (4) In this section—

formal legal advice means independent advice—

 - (a) given by a practising legal practitioner; and
 - (b) for the giving of which an amount is paid, or is payable, to the legal practitioner by the person to whom the advice is given.