



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 112 of 1976

An Act to impose statutory warranties in respect of contracts for the construction or sale of new houses; and for other purposes.

[Assented to 16th December, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as the "Defective Houses Act, 1976". **Short title.**

2. This Act shall come into operation on a day to be fixed by proclamation. **Commencement.**

3. In this Act, unless the contrary intention appears— **Interpretation.**
 - "builder" means any person who undertakes to construct a new house:
 - "house" means a building designed to be a place of residence:
 - "new house" means a house that has not previously been genuinely occupied as a place of residence:
 - "original occupier" in relation to a house means the person who first occupied the house as a place of residence:
 - "prospective occupier" in relation to a house means a person who proposes to occupy the house as a place of residence:
 - "statutory warranty" means a warranty arising under this Act.

4. (1) In any contract for the construction of a new house (being a contract made between a builder and a prospective occupier of the house) the following warranties on the part of the builder shall be implied:— **Implied warranties.**
 - (a) a warranty that the building work involved in the construction of the house will be carried out in a proper and workmanlike manner;
 - (b) a warranty that good and proper materials will be used in the construction of the house;

and

- (c) a warranty that, when the building work contemplated by the contract has been completed, the house will be reasonably fit for human habitation.

(2) In any contract for the sale of a new house (being a contract to which a prospective occupier of the house is a party) the following warranties on the part of the vendor shall be implied:—

- (a) a warranty that the building work involved in the construction of the house has been carried out in a proper and workmanlike manner;

- (b) a warranty that good and proper materials have been used in the construction of the house;

and

- (c) a warranty that the house will, on the day on which the purchaser is to receive vacant possession in pursuance of the contract, be reasonably fit for human habitation.

(3) Any person who purchases or otherwise acquires a house within five years after the date on which it was first occupied as a place of residence shall be subrogated to the rights of the original occupier in respect of statutory warranties.

(4) In any proceedings for breach of a statutory warranty, if the defendant alleges that—

- (a) not more than two years before construction of the house was commenced or during the course of its construction, advice in relation to the design or construction of the house (not being gratuitous advice) was obtained from a person holding himself out as being qualified or competent to give that advice;

- (b) it was reasonable in the circumstances for reliance to be placed upon that advice;

and

- (c) the deficiencies of which the plaintiff complains result, wholly or in part, from the fact that reliance was placed on that advice,

the court may, upon the application of the defendant, order that the person by whom the advice was tendered be joined as a party to the proceedings, and may, upon proof of the allegation, order that the whole or any part of the damages awarded for breach of the statutory warranty be paid by that person.

(5) In any proceedings against a builder for breach of a statutory warranty it shall be a defence for the builder to prove—

- (a) that the deficiencies alleged by the plaintiff do not result from any failure on the part of the builder—

- (i) to carry out building work, or to supply materials, in accordance with the express terms of the contract;

or

- (ii) to exercise due care in carrying out the building work stipulated by the express terms of the contract;

(b) that before completion of the building work stipulated in the contract the builder, by notice in writing, recommended to the prospective occupier for whom he undertook to build the house that—

(i) building work should be carried out, or materials supplied, otherwise than as stipulated in the contract;

or

(ii) building work should be carried out, or materials supplied, in addition to the building work or materials stipulated in the contract,

and

(c) that if the recommendation of the builder had been carried into effect the deficiencies alleged by the plaintiff would not have existed;

unless the court is satisfied—

(d) that the builder was in fact instructed to carry the relevant recommendation into effect;

and

(e) that it was, in all the circumstances of the case, reasonable that the builder should carry the recommendation into effect.

(6) A person shall not commence proceedings for breach of a statutory warranty unless he has, by notice in writing served upon the person against whom the proceedings are to be brought—

(a) informed him of the grounds upon which he proposes to bring the proceedings;

and

(b) offered him a reasonable opportunity—

(i) to inspect the premises to which the proceedings are to relate;

and

(ii) to make good any deficiencies in those premises.

(7) This section does not limit any liability to which the builder or vendor of a new house may be subject otherwise than under this Act.

(8) Subject to subsection (9) of this section, the provisions of this Act shall have effect notwithstanding any agreement or waiver to the contrary.

(9) A builder is entitled to exclude or limit by contract his liability under this Act for deficiencies in the construction of a house where—

(a) those deficiencies result from reliance upon advice (not being gratuitous advice) tendered to the builder by a person holding himself out as being qualified or competent to give the advice;

and

(b) by virtue of an agreement or waiver made or granted before the commencement of this Act the builder has no right to indemnify himself in respect of that liability by action against the person by whom the advice was tendered.

(10) This Act does not apply in respect of a contract made before the commencement of this Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. NICHOLLS, Governor