

Statutory Warranties in NSW

	Home Building Act – Mark 1	Home Building Act – Mark 2	Home Building Act – Mark 3
Date of Contract	To 31 January 2012	From 25 October 2011 / 1 February 2012	From 15 January 2015 / 1 March 2015
Definition of Date of Completion		Introduction of section 3B (on 25 October 2011) - the date of completion of residential building work is the date that the work is complete within the meaning of the contract under which the work was done but if the contract does not so provide, the earliest of whichever of the dates in section 3B(3) can be established	From 15 January 2015 Introduction of section 3C - only applies to new buildings (ie for occupation certificates issued on or after 15 January 2015) and sets completion as the date of issue of an occupation certificate that authorises the occupation and use of the whole of the building unless some other event, prescribed by regulations as constituting the completion of the work, has occurred
Defences for Contractors	None	None	Defences on the bases that the deficiencies arise from: <ul style="list-style-type: none"> - instructions given, by the person for whom the work was contracted to be done, contrary to the advice of the contractor, being written advice given before the work was completed; or - reasonable reliance on instructions given by a person who is a relevant professional acting for the person for whom the work was contracted
Limitation Period for beach of statutory warranties	7 years from completion	6 years (structural defects) and 2 years (other defects) from completion (on 1 February 2012)	6 years (major defects) and 2 years (other defects) from completion

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Type of Defects	Defects	Structural and other defects	<p>Major defect and other defects.</p> <p>A major defect is a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:</p> <ul style="list-style-type: none"> - the inability to inhabit or use the building (or part of the building) for its intended purpose; or - the destruction of the building or any part of the building; or - a threat of collapse of the building or any part of the building; or <p>Further, a major defect can be a defect of a kind that is prescribed by the regulations as a major defect.</p> <p>Major element of a building is: an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams); or a fire safety system; or waterproofing; or any other element that is prescribed by the regulations as a major element of a building</p>
Disputes			Rectification preferred outcome when determining a building claim (s 48MA)
			From 1 March 2015
S 18B(a) Warranty	A warranty that work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract		A warranty that work will be done with due care and skill and in accordance with the plans and specifications set out in the contract
Duties of Person Having Benefit of Statutory Warranty	None	None	<p>Section 18BA - restricts benefits of statutory warranties. There are now duties:</p> <ul style="list-style-type: none"> - on a party to the contract who suffers loss arising from a breach of statutory warranty to mitigate that loss; - to make reasonable efforts to provide written notice of the breach to the builder within six months of the breach becoming apparent; and - that an owner must not unreasonably refuse such access as may reasonably be required to rectify the breach