

Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs

Inquiry into Harmonisation of Legal Systems

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Introduction

The Standing Committee on Legal and Constitutional Affairs (Committee) has been asked to "inquire and report on lack of harmonisation within Australia's legal system, and between the legal systems of Australia and New Zealand, with particular reference to those differences that have an impact on trade and commerce".

A number of areas of review have been identified, including partnership laws, evidence law and legal procedures. This list is not intended to be exhaustive and the Committee may examine other areas where a uniform approach may be warranted.

This submission examines the area of implied warranties in consumer transactions, contract law and equity. It concludes that a lack of consistency in these areas impose unnecessary transaction costs on businesses. It recommends that this be addressed by a uniform code on consumer and contract law, applying two variants of the template model identified in the Committee's Background brief.¹

Productivity Commission review

In its 2004 Study the Productivity Commission noted the views of a number of participants that differences in consumer protection regimes at the Australian State and Territory level impose costs on Australian and New Zealand businesses.² Each State and Territory Government has separate responsibility for policy direction and for enforcement activity.

It indicated that efforts at harmonisation between Australia and New Zealand could potentially be ineffective if harmonisation does not also include relevant State and Territory legislation.³

In its review of National Competition Policy, the Commission proposed a national review of Australian consumer protection policy and administration that considers the effectiveness of existing measures in protecting consumers, mechanisms for coordinating policy development and application across jurisdictions for avoiding regulatory duplication.⁴ In its 2004 Study it recommended extending such a review to include possible impediments to the long term objective of a single economic market.⁵

¹ Background Brief: *Harmonisation of Legal Systems Relating to Trade and Commerce*, February 2005.

² Productivity Commission 2004, *Australian and New Zealand Competition and Consumer Protection Regimes*, Research Report, Canberra (PC 2004 ANZCCPR)

³ PC 2004 ANZCCPR at p183.

⁴ Productivity Commission 2004, *Review of National Competition Policy Reforms*, Canberra p283.

⁵ PC 2004 ANZCCPR at pp 96-97.

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BY: LACA

The Australian Government has indicated its support for a national review of consumer protection laws.

The submission proposes that such a review should examine implied terms in consumer transactions and a code of contract law and equity.

1. Implied warranties in consumer transactions

In each Australian State and Territory and in New Zealand, sale of goods legislation provides for terms to be implied in contracts for the sale of goods. The provisions generally permit implied warranties to be modified or excluded. Effective exclusion of implied warranties therefore deprives consumers of the benefit of important post sale consumer protection.

To alleviate the impact on consumers, provisions in the Commonwealth *Trade Practices Act 1974* (TPA), the New Zealand *Consumer Guarantees Act 1993* (CGA) and equivalent legislation in the States and Territories prohibit exclusion or 'contracting out' of the implied terms in consumer transactions, variously described.

Notably the TPA, provides the following implied terms:

- the supplier has the right to sell the goods, the goods are unencumbered and the consumer has the right to quiet enjoyment (TPA s69(1))
- goods will comply with their description or sample (TPA s70,)
- goods will comply with a sample (TPA s72)
- goods will be of merchantable quality and fit for the purpose (TPA s71, CGA ss 6-8)

This submission relies on the comparative tables of implied warranties in the appendix, compiled for the purpose of this submission.

The tables are not intended to outline every difference between jurisdictions. For example, some jurisdictions permit limitation of liability in certain circumstances. Some provisions apply to both goods and services and imply other warranties in consumer transactions. The terms are also variously defined as warranties, conditions or guarantees, with different rights and remedies attaching to them. This submission does not examine these differences. The submission and the accompanying tables examine only the substantive differences between jurisdictions in implied terms in consumer transactions (equivalent to those in the TPA above) that cannot be excluded.

1.1 Overview of non-excludable implied terms in consumer transactions

Table 1 is a comparative table of non - excludable implied terms in consumer transactions in each Australian jurisdiction and in New Zealand. A number of inconsistencies are immediately apparent. Legislation for implied terms in consumer transactions is not uniform- Queensland, Tasmania and the Australian Capital Territory have no express provisions.

The jurisdictions that have express provisions rely variously on the sale of goods legislation, fair trading legislation, or in the case of South Australia and New

Zealand – on consumer transaction legislation. Although what is important are the rights conferred by legislation, the varying titles used by jurisdictions serve to highlight the lack of uniformity.

Firms and consumers cannot turn to a single piece of legislation for a comprehensive list of rights and obligations. For firms, this adds to transaction costs, particularly those firms operating multiple jurisdictions. For consumers, the title of legislation (particularly sale of goods legislation) gives no obvious indication that it confers consumer rights.

1.2 The definition of ‘consumer’

Jurisdictions that provide non-excludable implied terms do so only in sales to a consumer or in specified consumer transactions. Identifying who is a consumer is therefore critical to the operation of the legislation, to a firm’s obligation not to exclude these implied terms in sales to a consumer and a consumer’s ability to rely on the implied terms in actions against a firm.

Table 2 is a comparative table of the definitions of ‘consumer’ in the Australian States and Territories and in New Zealand. It highlights fundamental differences in the definition across jurisdictions.

The Commonwealth, Victoria and Western Australia employ a two tiered test of ‘consumer’: A person is a consumer if the value of the goods is less than \$40,000 or if more than \$40,000, the goods must be of a kind ordinarily acquired for personal domestic or household use or consumption. Western Australia expands the definition to include a person who is a consumer for the purpose of the *Consumer Affairs Act 1971*. Each jurisdiction excludes from the definition, goods acquired for the purpose of re-supply or for use in a production process. The jurisdictions have various degrees of specificity in ascertaining the amount of an individual transaction.

South Australia uses a single tiered monetary amount. It defines a consumer contract as one involving a consideration of less than \$40,000. It expressly excludes a body corporate and other specific agreements including contracts conferring a right or licence to occupy land.

In New South Wales the Sale of Goods Act includes implied warranties in consumer sales. The new South Wales Fair Trading Act was amended by the *Fair Trading Amendment Act 2003* (NSW) to also include implied warranties in consumer transactions, similar to those in the TPA. For NSW, the remainder of this submission only discusses the sale of goods legislation.

The Northern Territory does not use a monetary amount and also departs from the use of expressions intended to define the intrinsic nature of a consumer transaction. Rather a person acquires goods as a consumer if they are acquired from a supplier, other than for re-supply or for use in a process of production or the repair or treatment of other goods or fixtures on land.

New Zealand defines a consumer using the “personal, domestic or household use or consumption” formulation used by the Commonwealth, Victoria and Western

Australia. It similarly excludes goods acquired for the purpose of re-supply or for use in a production process.

1.3 The implied warranties

Title, Encumbrances, Quiet Enjoyment

Table 3 is a comparative table of implied terms as to title, quiet enjoyment and freedom from encumbrances in the Australian States and Territories and in New Zealand.

Each of the jurisdictions listed has an implied term that the seller has a right to sell the goods, that the consumer will enjoy quiet possession of the goods and that the goods will be free from an encumbrance not disclosed to the consumer.

The formulation employed in the Australian jurisdictions is broadly similar, with minor differences relating to the implications of prior security interests on the implied warranty as to freedom from encumbrances.

Compliance with Description

Table 4 is a comparative table of implied terms relating to compliance with description in Australian States and Territories and in New Zealand.

Each of the jurisdictions listed has an implied term that goods will correspond with their description. Western Australia and the Northern Territory broadly follow the formulation used by the Commonwealth.

The main difference between jurisdictions is that in South Australia, New South Wales, Victoria and New Zealand, it is not necessary that the goods be supplied in the course of a business. The Victorian provision does not require that if goods are sold by reference to a sample as well as by description, they must comply with the sample and the description.

Merchantable quality

Table 5 is a comparative table of implied terms relating to merchantable quality in Australian States and Territories and in New Zealand.

Each of the Australian jurisdictions listed has an implied term that goods will be of merchantable quality. In New Zealand there is a guarantee of acceptable quality.

The Western Australian and the Northern Territory provisions mirror those in the Commonwealth TPA. In each case the implied term that goods will be of merchantable quality will not apply where defects are specifically brought to the attention of the consumer before the contract is made or in relation to defects revealed on examination of the goods.

The Victorian provision includes a non-exhaustive list of factors - price, terms of supply and the condition of the goods, which are to be considered in determining whether goods are of merchantable quality.

In New South Wales the goods must be bought by reference to their description from a seller who deals in goods of that description.

Like Victoria, the South Australia provision includes a list of factors to be considered in determining whether goods are of merchantable quality. In South Australia there is no implied term in relation to defects which the supplier could not reasonably have been aware at the time the contract was made. The South Australian provision also makes no reference to defects specifically brought to the attention of the consumer before the contract is made.

The New Zealand provision implies a guarantee of acceptable quality. Like Victoria, the New Zealand provision includes a non-exhaustive list of factors to be considered in determining whether goods are of acceptable quality. The factors are different to and more extensive than its South Australian equivalent. The New Zealand provision also provides that goods will not breach the guarantee because the goods have been used in manner inconsistent with the use by a reasonable consumer.

The discussion above shows that there are significant differences in the formulation and application of the implied warranty as to merchantable quality. Those differences may be summarised briefly:

- The expression used to describe the warranty, condition or guarantee
- Whether the expression is defined in the legislation or if not defined whether the common law meaning applies
- The factors to be considered in determining whether the provision applies
- Whether the supplier could reasonably have been aware of defects at the time the contract was made
- The obligation on the buyer to examine the goods prior to purchase

Fitness for Purpose

Table 6 is a comparative table of implied terms relating to fitness for purpose in Australian States and Territories and in New Zealand.

The Western Australian and the Northern Territory provisions mirror those in the Commonwealth TPA. They provide that where goods are supplied in the course of a business and the consumer makes known a particular purpose for which the goods are being acquired, there is an implied condition that the goods are reasonably fit for that purpose. It is immaterial whether or not that is a purpose for which such goods are commonly supplied, except where the consumer does not rely or it is unreasonable to rely on the skill or judgement of the supplier.

The South Australian and New South Wales provisions require that the goods be of a description which it is in the course of the suppliers business to supply. In each case the consumer must also show reliance on the skill and judgement of the supplier. In New South Wales however, there is no implied condition where a good is sold under its patent or trade name.

In Victoria the provision will not apply if the circumstances show that the purchaser does not rely or that it is unreasonable for the purchaser to rely on the skill or judgement of the supplier.

In New Zealand the guarantee as to fitness for purpose includes that the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.

The discussion above shows that like the implied warranty as to merchantable quality, there are significant differences in the formulation and application of the implied warranty as to fitness for purpose. Those differences may be summarised briefly:

- The requirement in some jurisdictions that the goods be of a description which it is in the course of the suppliers business to supply
- The need to demonstrate reliance on the skill or judgement of the supplier
- Exclusions for goods sold under a patent or trade name
- The relevance of a purpose made known by the supplier

Sample

Table 7 is a comparative table of implied terms relating to compliance with a sample in Australian States and Territories and in New Zealand.

The Commonwealth TPA implies three separate conditions into every contract for the supply of goods by a supplier in the course of business:

- that the bulk will correspond with the sample in quality
- that the consumer will have a reasonable opportunity of comparing the bulk with the sample
- that the goods will be free from any defect rendering them unmerchantable, that would not be apparent on reasonable inspection of the sample

The Western Australian, New South Wales and Northern Territory provisions follow this same formulation. The South Australian provision is similar, except that there is no requirement that the goods be supplied in the course of a business.

The Victorian provision is significantly different to all other Australian jurisdictions in form and content. In Victoria the implied warranty applies only if the purchaser is shown a sample of the goods and is induced by the sample to purchase the goods or goods of a similar kind. The first two warranties implied in the TPA are otherwise mirrored in Victoria. The third warranty is different in Victoria – there is a requirement that the purchaser also not be aware of the defect at the time the goods are acquired.

The New Zealand provision contains the first and second, but not the third warranty found in the TPA. It does however extend the two warranties to both samples and to demonstration models.

1.4 Conclusion on implied warranties in consumer transactions

The above analysis demonstrates that jurisdictions use very different terminology, often employing antiquated and convoluted drafting styles reflecting their historical antecedents. The formulations and their application vary considerably between jurisdictions. They are inconsistent in their scope and in their exclusions.

Particularly regrettable are the considerable differences in the fundamental definition of 'consumer' on which the implied terms rely.

Constitutional limitations mean that the Commonwealth provisions apply principally to corporations, leaving beyond its reach many other business structures including the professions and unincorporated associations. The States and Territories are not subject to these limitations. Accordingly all of the implied terms examined above are expressed to apply to 'persons', not just corporations. The Commonwealth's constitutional limitations highlight the importance of the additional reach of State and Territory laws. The inconsistencies and differences in those laws however, severely undermine not only national uniformity but harmonisation and integration with New Zealand.

These implied terms cannot be excluded in transactions with consumers. Most of the provisions provide that any attempt to exclude them is void. Some expressly prohibit their exclusion. Quite separately, a firm that purports to exclude these implied terms runs the risk that their conduct will be misleading or deceptive (or constitute a false representation) under the TPA and under equivalent provisions in the State and Territory Fair Trading Acts.

Firms therefore need to fully understand the application and scope of the implied terms so they do not offend this prohibition. Equally this understanding is important as part of their post sale obligations to consumers. Firms operating in multiple Australian jurisdictions and in Trans-Tasman trade face significant costs in complying with different statutory provisions. These include the costs of obtaining legal advice, different trading terms and consumer warranty brochures in different jurisdictions, compliance programs and staff training and education.

Consumers cannot be expected to know, understand or appreciate the significance of jurisdictional differences, essential for effective enforcement of their rights.

A uniform national approach to implied warranties enables consumers to better understand their rights and firms to minimise transaction costs in meeting their statutory obligations. The following section comments on options to achieve this.

2. A national approach to harmonisation

The Committee's Background brief identifies four mechanisms by which greater harmonisation of laws might be achieved – the template model, co-operative or complementary schemes, referral of powers model and constitutional amendment.⁶

⁶ Background Brief: *Harmonisation of Legal Systems Relating to Trade and Commerce*, February 2005 pp4-6.

As the Background brief notes, the referral of powers model and constitutional amendment present considerable obstacles and in the case of a referral of powers, calls into question the federal compact.

There is ample precedent for co-operative or complementary schemes. A disadvantage of this model is that individual jurisdictions are free to enact legislation to give effect to a stated policy. Compliance does not necessarily require mirror legislation. Over time subtle differences in legislation have the potential to undermine the very uniformity such schemes seek to enshrine. Not infrequently jurisdictional exemptions or derogations are permitted, resulting in further differences.

As the discussion of implied terms shows, small differences in statutory provisions translate to significant differences in both the scope and application of consumer warranties.

To improve understanding and to reduce transaction costs that firms and consumers expect, differences inherent in co-operative schemes must be discouraged.

One particular form of the template model – used to establish the Competition Codes of the States and Territories, could successfully be applied to establish a uniform national approach to consumer protection laws. In 1999 the Commonwealth enacted the Schedule version of Part IV of the TPA – the competition provisions of the TPA. The Schedule version mirrors Part IV, except that references to a ‘corporation’ (reflecting the Commonwealth’s reliance on the limited corporations power in the Constitution) are replaced with references to a ‘person’.⁷

Each State and Territory passed application legislation applying the Schedule version in their jurisdictions – known as the Competition Code. Inter-governmental agreements which support the scheme provide mechanisms for consultation on legislative amendments and a transparent process for exclusions and exemptions. It is an effective scheme that provides a uniform application of Part IV. It is an exceptional example of effective co-operative federalism.

A similar scheme should be applied to achieve a uniform national consumer law in Australia. It is particularly suitable as a model as the Commonwealth, States and Territories each have concurrent jurisdiction for consumer protection. The scheme could readily be adopted by New Zealand. Issues of sovereignty however, would favour mirror laws in New Zealand (supported by an inter-governmental agreement), rather than direct application of the Australian law.

3. Contract law

The previous section examined one feature of contract law – terms implied by legislation. Sale of goods legislation, other statutory provisions and the common law collectively regulate all other features of contract law including the formation of a contract, privity, consideration, express and implied terms, termination, rights and remedies.

⁷ See generally the discussion in Steinwall R *Annotated Trade Practices Act 1974*, 2005 edition. LexisNexis 2005, p 648.

In this area, like the non-excludable implied terms discussed above, the sale of goods legislation in the Australian jurisdictions is inconsistent. In any case, sale of goods legislation is not and does not purport to be a complete code of contract law: It applies only to contracts for the sale of *goods* and does not address every feature of contract formation, operation or enforcement. Indeed there is no complete code in Australia or New Zealand. Firms and consumers must look to the combined operation of Commonwealth, State and Territory laws, to the common law and to equity.

The possibility of a contract code for Australia has at times been mooted. A contract code would have numerous advantages:

- It would provide an opportunity to review and reform provisions that operate harshly or unjustly.
- It could eliminate inconsistencies in State and Territory laws.
- It could expressly codify complex and at times inconsistent judicial precedent.
- For consumers and small business, a code could assist to de-mystify contract law and make it more accessible through a single instrument.
- A code would ensure consistency across jurisdictions, assisting firms that operate in multiple jurisdictions.
- Code amendment would occur only after a period of transparent public consultation, enabling the costs and benefits to specific sectors to be assessed.
- It would assist understanding of contract law and through understanding better compliance
- It would facilitate harmonisation with New Zealand.

The Commonwealth's constitutional power limits its ability to enact a contract code capable of universal application. Commonwealth law, particularly the TPA applies only to discrete areas of contract law, for example warranties and misleading and unconscionable conduct. Even if the Commonwealth had the constitutional power, it is unlikely that it would exercise it - traditionally this area has been the almost exclusive province of the States and Territories and the common law.

This means that the particular template model proposed for harmonising implied terms is unlikely to be appropriate. A variation on that model - uniform State and Territory laws is likely to be more suitable. Uniformity may be achieved by each State and Territory applying a template law or by one jurisdiction (the lead jurisdiction) legislating and every other jurisdiction applying that law.

4. Equity

'Equity' is used here to refer to that body of law, distinct from the common law, having its history in England in the Court of Chancery and subsequently received into Australia. Equitable principles apply to interests in real and personal property, to the transfer of rights, to the recognition of security interests and for specific equitable remedies and defences.

Given its history it is not surprising that equitable principles have a long history and tradition. Reform in Australia has endeavoured to achieve some fusion of sorts of

equity and the common law, particularly through the courts which once administered a quite separate equitable jurisdiction. Despite this, in practice it is still usual to refer separately to rights and remedies at law and in equity.

Extensively based on judicial precedent (with some statutory modifications), equitable principles are often difficult to state with any precision, reflecting differences of judicial opinion within and across jurisdictions. Precedent based, careful analysis is required of numerous judgements in order to distil binding principles.

For all these reasons equity has developed into a discrete body of law. Few people would profess to fully understand the equitable principles and its nuances. A sense of mystique has therefore built up around equity and with it a degree of specialisation well beyond the ordinary person and indeed many lawyers. In some circles this uniqueness is cultivated because it preserves its long tradition.

Equity in its current form is an anachronism. It is no longer acceptable that tradition and practice should deprive a person a reasonable understanding of principles that apply to many facets of businesses and commercial dealings. There is no cogent reason (if there ever was) why a serious attempt should not be made to codify the principles of equity.

A code of equity could and should be implemented in much the same way as the proposed contract code.

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Appendix

Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into Harmonisation of Legal Systems

Table 1: Non - excludable implied terms in consumer transactions

Jurisdiction	Provision	Title, Encumbrances, Quiet Enjoyment	Description	Merchantable Quality	Fitness for purpose	Sample
Commonwealth (Cth)	Trade Practices Act 1974 (TPA)	s69	s70	s71(1)	s71(2)	s72
New South Wales (NSW)	Fair Trading Act 1987 (FTA)	s40O	s40P	s40Q	s40Q	s40R
New South Wales (NSW)	Sale of Goods Act 1923 (SGA)	s17	s18	s19	s19	s20
Queensland (Qld)	-	-	-	-	-	-
South Australia (SA)	Consumer Transactions Act 1972 (CTA)	s6	s6	s6	s6	s6
Tasmania (Tas)	-	-	-	-	-	-
Victoria (Vic)	Fair Trading Act 1999(FTA)	s32G	s32H	s32I	s32IA	s32HA
Western Australia (WA)	Fair Trading Act 1987(FTA)	s36	s37	s38(1)	s38(2)	s39

Australian Capital Territory (ACT)	-	-	-	-	-	-
Northern Territory (NT)	Consumer Affairs and Fair Trading Act 1990 (CAFTA)	s62	s63	s64(1)	s64(2)	s65
New Zealand (NZ)	Consumer Guarantees Act 1993(CGA)	s5	s9	s6 (cf s7)	s8	s10

Table 2: Definition of ‘Consumer’ for the purpose of non – excludable implied warranties in consumer transactions

Jurisdiction	Provision	Definition of Consumer
Cth	TPA s4B	<p>For the purposes of this Act, unless the contrary intention appears:</p> <p>(a) a person shall be taken to have acquired particular goods as a consumer if, and only if:</p> <p>(i) the price of the goods did not exceed the prescribed amount; or (ii) where that price exceeded [\$40,000]the prescribed amount – the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial road vehicle;</p> <p>and the person did not acquire the goods, or hold himself or herself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land; and</p> <p>(b) a person shall be taken to have acquired particular services as a consumer if, and only if:</p> <p>(i) the price of the services did not exceed the prescribed amount; or (ii) where that price exceeded the prescribed amount – the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.</p>
NSW	FTA s5	<p>(1) In this Act, a reference to a consumer is a reference to a person who:</p> <p>(a) acquires goods or services from a supplier, or (b) acquires an interest in land, other than land used, or intended to be used, or apparently intended for use, for industrial or commercial purposes.</p> <p>(2) Goods or services referred to in subsection (1) do not (except for the purposes of section 43) include goods or services acquired, or held out as being acquired, for re-supply or, in the case of goods, in the course of a business other than a farming undertaking for the purpose of:</p>

		<p>(a) consuming or transforming them by a process of manufacture or production, or</p> <p>(b) using them for the repair or treatment of other goods or of fixtures on land.</p> <p>(3) In this section:</p> <p><i>farming undertaking</i> includes:</p> <p>(a) the raising of stock to provide meat or other food for human consumption, and</p> <p>(b) any agricultural, pastoral, horticultural, orcharding or viticultural undertaking.</p>
NSW	SGA s 62	<p>In this Part, <i>consumer sale</i> means a sale of goods (other than a sale by auction) by a seller in the course of a business where the goods:</p> <p>(a) are of a kind commonly bought for private use or consumption, and</p> <p>(b) are sold to a person who does not buy or hold himself or herself out as buying them in the course of a business.</p>
Qld	-	-
SA	CTA s 2	<p>"consumer contract" means a contract or agreement—</p> <p>(a) under which a person (other than a body corporate)—</p> <p>(i) purchases goods or contracts for the performance of services; or</p> <p>(ii) takes goods on hire (whether or not the contract purports to confer a right or option on the consumer to purchase the goods); or</p> <p>(iii) acquires by other means the use or benefit of goods or services; and</p> <p>(b) under which the consideration to be paid or provided by or on behalf of the consumer in money or money's worth does not exceed \$40 000 (excluding any interest or fees or charges payable because credit is or is to be provided for the transaction),</p> <p>but does not include—</p> <p>(c) a sale by auction; or</p> <p>(d) a contract or agreement for the sale, bailment, or disposition of goods to a person who trades in goods of that description; or</p> <p>(e) a contract or agreement that includes a provision conferring a right or licence to occupy land; or</p>

		(f) a contract or agreement of a kind declared by regulation not to be a consumer contract for the purposes of this Act;
Tas	-	-
Vic	FTA s32D	<p>(1) In this Part a reference to a contract of supply of goods or services is a reference to a contract of supply of goods or services where the cash price of the goods or services-</p> <p>(a) is not more than \$40 000; or</p> <p>(b) is more than \$40 000 and the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption.</p> <p>(2) If an amount greater than \$40 000 is prescribed by the regulations for the purposes of this section, a reference in this section to \$40 000 is a reference to the prescribed amount.</p>
WA	FTA s6	<p>(1) In this Act, a reference to a consumer is a reference to a person –</p> <p>(a) who for the purposes of the <i>Consumer Affairs Act 1971</i> would be a consumer within the meaning of that term as defined in section 4 of that Act; and</p> <p>(b) who acquires, or proposes to acquire –</p> <p>(i) goods or services; or</p> <p>(ii) an interest in land, not being land used, or intended to be used, or apparently intended for use, for industrial or commercial purposes.</p> <p>(2) For the purposes of this Act, unless the contrary intention appears –</p> <p>(a) a person shall be taken to have acquired particular goods as a consumer if, and only if –</p> <p>(i) the price of the goods did not exceed the prescribed amount; or</p> <p>(ii) where that price exceeded the prescribed amount – the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a commercial vehicle, and the person did not acquire the goods, or hold himself out as acquiring the goods, for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or</p>

manufacture or of repairing or treating other goods or fixtures on land; and

(b) a person shall be taken to have acquired particular services as a consumer if, and only if –

(i) the price of the services did not exceed the prescribed amount; or

(ii) where that price exceeded the prescribed amount – the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

(3) For the purposes of subsection (2) –

(a) the prescribed amount is \$40 000 or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount;

(b) subject to paragraph (c), the price of goods or services purchased by a person shall be taken to have been the amount paid or payable by the person for the goods or services;

(c) where a person purchased goods or services together with other property or services, or with both other property and services, and a specified price was not allocated to the goods or services in the contract under which they were purchased, the price of the goods or services shall be taken to have been –

(i) the price at which, at the time of the acquisition, the person could have purchased from the supplier the goods or services without the other property or services;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier except together with the other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier without other property or services – the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or

(iii) if, at the time of the acquisition, goods or services of the kind acquired were not available for purchase from any supplier except together with other property or services – the value of the goods or services at that time;

(d) where a person acquired goods or services otherwise than by way of purchase, the price of the goods or services shall be taken to have been –

(i) the price at which, at the time of the acquisition, the person could have purchased the goods or services from the supplier;

(ii) if, at the time of the acquisition, the goods or services were not available for purchase from the supplier or were so available only together with other property or services but, at that time, goods or services of the kind acquired were available for purchase from another supplier – the lowest price at which the person could, at that time, reasonably have purchased goods or services of that kind from another supplier; or

(iii) if goods or services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier or were not so available except together with other property or services – the value of the goods or services at that time.

		<p>(4) Where it is alleged in any proceeding under this Act or in any other proceeding in respect of a matter arising under this Act that a person was a consumer in relation to particular goods, services or land, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to the goods, services or land.</p> <p>(5) In this section, "commercial vehicle" has the meaning given by section 5(1) of the <i>Credit Act 1984</i>.</p>
ACT	FTA s6	<p>(1) For this Act, a <i>consumer</i> is a person who acquires goods or services from a supplier.</p> <p>(2) A person is not a <i>consumer</i> for this Act if, in the course of a business, he or she acquires, or holds himself or herself out as acquiring, goods or services from a supplier for the purpose of –</p> <p>(a) resupplying them; or</p> <p>(b) using them up or transforming them in or in connection with a process of manufacture or production; or</p> <p>(c) repairing or treating other goods or fixtures on land.</p> <p>(3) If it is alleged in any proceedings under this Act or in any other proceedings in relation to a matter arising under this Act that a person was a consumer in relation to particular goods or services, it shall be presumed, unless the contrary is established, that the person was a consumer in relation to those goods or services.</p> <p><i>supply</i>, when used as a verb, includes –</p> <p>(a) in relation to goods –</p> <p>(i) supply (including resupply) by way of sale, exchange, lease, hire or hire-purchase; and</p> <p>(ii) exhibit, expose or have in possession for the purpose of sale, exchange, lease, hire or hire-purchase or for any purpose of manufacture or trade in relation to the supply of goods; and</p> <p>(iii) donate for promotional purposes; and</p> <p>(b) in relation to services – provide, grant, give or donate for promotional purposes; and</p> <p>and, when used as a noun, has a corresponding meaning, and <i>supplied</i> and <i>supplier</i> have corresponding meanings.</p>
NT	CAFTA s 5	<p>(1) In this Act, a reference to a consumer is, subject to subsection (2), a reference to a person who acquires goods or services from a supplier.</p> <p>(2) In subsection (1), "goods" does not include goods which are acquired, or are held out as being acquired –</p> <p>(a) for the purpose of re-supply; or</p> <p>(b) for the purpose of using them up or transforming them, in the course of a business, in or in connection with a process of manufacture or production,</p>

		and in that subsection as it has effect for the purposes of Parts 5 and 6, the term also does not include goods which are acquired, or held out as being acquired, for the purpose of using them up or transforming them, in the course of a business, in or in connection with the repair or treatment of other goods or of fixtures on land.
New Zealand	CGA s2	<p>“Consumer” means a person who—</p> <p>(a) Acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and</p> <p>(b) Does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of—</p> <p>(i) Resupplying them in trade; or</p> <p>(ii) Consuming them in the course of a process of production or manufacture; or</p> <p>(iii) In the case of goods, repairing or treating in trade other goods or fixtures on land.</p>

Table 3: Non-Excludable Implied terms as to Title, Encumbrances and Quiet Enjoyment

Jurisdiction	Provision	Title, Encumbrances, Quiet Enjoyment
Cth	TPA s69	<p>In every contract for the supply of goods by a corporation to a consumer, other than a contract to which subsection (3) applies, there is:</p> <p>(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;</p> <p>(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and</p> <p>(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer – an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.</p> <p>(2) A corporation is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in paragraph (1)(c) by reason only of the existence of a floating charge over assets of the corporation unless and until the charge becomes fixed and enforceable by the person to whom the charge is given</p> <p>(3) In a contract for the supply of goods by a corporation to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as he or she or a third person may have, there is:</p> <p>(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and</p> <p>(b) an implied warranty that::</p> <p style="padding-left: 40px;">(i) the supplier;</p>

		<p>(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have – that person; and</p> <p>(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made; will not disturb the consumer's quiet possession of the goods.</p>
NSW	FTA s40O	<p>(1) In a contract for the supply of goods by a person (<i>the supplier</i>) to a consumer (other than a contract to which subsection (3) applies) there is:</p> <p>(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass, and</p> <p>(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made, and</p> <p>(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer – an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.</p> <p>(2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1) (c) by reason only of the existence of a floating charge over assets of the person unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.</p> <p>(3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as the supplier or a third person may have, there is:</p> <p>(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made, and</p> <p>(b) an implied warranty that:</p> <p>(i) the supplier, and</p> <p>(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have – that person, and</p> <p>(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made, will not disturb the consumer's quiet possession of the goods.</p>

NSW	SGA s 17	<p>In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:</p> <ol style="list-style-type: none"> (1) an implied condition on the part of the seller that in the case of a sale the seller has a right to sell the goods, and that in the case of an agreement to sell the seller will have a right to sell the goods at the time when the property is to pass, (2) an implied warranty that the buyer shall have and enjoy quiet possession of the goods, (3) an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made.
Qld	-	-
SA CTA s6	CTA s6	<p>6. (1) In every consumer contract for the sale of goods there is –</p> <ol style="list-style-type: none"> (a) an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and (b) an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known to the consumer before or at the time when the contract is made. <p>(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.</p> <p>(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied –</p> <p>(a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or</p>

		<p>(b)if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.</p> <p>(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:</p> <p>(a)the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and</p> <p>(b)the apparent condition of the goods.</p> <p>(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that the goods are reasonably fit for that purpose.</p>
Tas	-	-
Vic	FTA s32G	<p>32G. Terms implied in contracts as to right to supply</p> <p>(1) Subject to section 32GA, in a contract of supply of goods there is-</p> <p>(a) an implied condition that-</p> <p>(i) in the case of a contract, not being an agreement to supply, the supplier has a right to supply the goods; and</p> <p>(ii) in the case of an agreement to supply, the supplier will have a right to supply the goods at the time when the property is to pass; and</p> <p>(b) an implied condition that, at the time the property in the goods is to pass, the goods will be free from any charge or encumbrance other than a charge or encumbrance-</p> <p>(i) of which the purchaser is aware when the supply is made; and</p> <p>(ii) subject to which the purchaser has agreed to accept the goods; and</p> <p>(c) an implied warranty that the purchaser will enjoy quiet possession of the goods, except as far as it may be disturbed by a</p>

		<p>person entitled to the benefit of a charge or encumbrance-</p> <p>(i) of which the purchaser is aware when the supply is made; and (ii) subject to which the purchaser has agreed to accept the goods.</p> <p>(2) This section does not apply to a contract of supply of goods by way of lease.</p>
WA	FTA s36	<p>36 . Implied undertakings as to title, encumbrances and quiet possession (TPA s. 69)</p> <p>(1) In every contract for the supply of goods to a consumer, other than a contract to which subsection (3) applies, there is –</p> <p>(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;</p> <p>(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and</p> <p>(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer – an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.</p> <p>(2) A supplier is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1)(c) by reason only of the existence of a floating charge over assets of the supplier unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.</p> <p>(3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract or is to be inferred from the circumstances of the contract an intention that the supplier should transfer only such title as he or a third person may have, there is –</p> <p>(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and</p> <p>(b) an implied warranty that –</p>

		<p>(i) the supplier;</p> <p>(ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have – that person; and</p> <p>(iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made, will not disturb the consumer’s quiet possession of the goods.</p>
ACT		-
NT	CAFTA s62	<p>62. Implied undertakings as to title, encumbrances and quiet possession</p> <p>(1) In every contract for the supply of goods to a consumer, other than a contract to which subsection (3) applies, there is –</p> <p>(a) an implied condition that, in the case of a supply by way of sale, the supplier has a right to sell the goods, and, in the case of an agreement to sell or a hire-purchase agreement, the supplier will have a right to sell the goods at the time when the property is to pass;</p> <p>(b) an implied warranty that the consumer will enjoy quiet possession of the goods except so far as it may lawfully be disturbed by the supplier or by another person who is entitled to the benefit of any charge or encumbrance disclosed or known to the consumer before the contract is made; and</p> <p>(c) in the case of a contract for the supply of goods under which the property is to pass or may pass to the consumer – an implied warranty that the goods are free, and will remain free until the time when the property passes, from any charge or encumbrance not disclosed or known to the consumer before the contract is made.</p> <p>(2) A person is not, in relation to a contract for the supply of goods, in breach of the implied warranty referred to in subsection (1)(c) by reason only of the existence of a floating charge over assets of the person unless and until the charge becomes fixed and enforceable by the person to whom the charge is given.</p> <p>(3) In a contract for the supply of goods to a consumer in the case of which there appears from the contract, or is to be inferred from the circumstances of the contract, an intention that the supplier should transfer only such title as the supplier or a third person may have, there is –</p> <p>(a) an implied warranty that all charges or encumbrances known to the supplier and not known to the consumer have been disclosed to the consumer before the contract is made; and</p> <p>(b) an implied warranty that –</p>

		<ul style="list-style-type: none"> (i) the supplier; (ii) in a case where the parties to the contract intend that the supplier should transfer only such title as a third person may have – that person; and (iii) anyone claiming through or under the supplier or that third person otherwise than under a charge or encumbrance disclosed or known to the consumer before the contract is made, <p>will not disturb the consumer's quiet possession of the goods.</p>
New Zealand	CGA s5	<p>5. Guarantees as to title –</p> <p>(1) Subject to section 41 of this Act, the following guarantees apply where goods are supplied to a consumer:</p> <ul style="list-style-type: none"> (a) That the supplier has a right to sell the goods; and (b) That the goods are free from any undisclosed security; and (c) That the consumer has the right to undisturbed possession of the goods, except in so far as that right is varied pursuant to – <ul style="list-style-type: none"> (i) A term of the agreement for supply in any case where that agreement is a hire purchase agreement within the meaning of the [Income Tax Act 2004]; or (ii) A security, or a term of the agreement for supply, in respect of which the consumer has received – <ul style="list-style-type: none"> (A) Oral advice, acknowledged in writing by the consumer, as to the way in which the consumer's right to undisturbed possession of the goods could be affected, sufficient to enable a reasonable consumer to understand the general nature and effect of the variation; and (B) A written copy of the agreement for supply or security, or a written copy of the part thereof which provides for the variation. <p>(2) A reference in subsection (1)(a) of this section to a "right to sell" goods means a right to dispose of the ownership of the goods to the consumer at the time when that ownership is to pass.</p> <p>(3) An "undisclosed security" referred to in this section means any security that was neither disclosed to the consumer in writing before he or she agreed to the supply nor created by or with the express consent of the consumer.</p> <p>(4) Nothing in subsection (1)(a) or (1)(b) of this section shall apply in any case where the goods are only hired or leased.</p> <p>(5) Where the goods are only hired or leased, the guarantee set out in subsection (1)(c) of this section shall confer a right to undisturbed possession of the goods only for the period of the hire or lease.</p> <p>(6) Part 2 of this Act gives the consumer a right of redress against the supplier where the goods fail to comply with any</p>

		guarantee in this section.
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Table 4: Non-Excludable Implied terms as to description

Jurisdiction	Provision	Description
Cth	TPA s70	<p>(1)Where there is a contract for the supply (otherwise than by way of sale by auction) by a corporation in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.</p>
NSW	FTA s40P	<p>(1)In a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(2)A supply of goods is not prevented from being a supply by description for the purposes of this section by reason only that, being exposed for sale or hire, they are selected by the consumer.</p>
NSW	SGA s 18	Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.
Qld	-	-
SA	CTA s6	<p>6. (1) In every consumer contract for the sale of goods there is—</p> <p>(a)an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and</p> <p>(b)an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known</p>

		<p>to the consumer before or at the time when the contract is made.</p> <p>(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.</p> <p>(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied –</p> <p>(a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or</p> <p>(b) if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.</p> <p>(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:</p> <p>(a) the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and</p> <p>(b) the apparent condition of the goods.</p> <p>(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that the goods are reasonably fit for that purpose.</p>
Tas	-	-
Vic	FTA s32H	32H. Supply of goods by description

		<p>(1) In a contract of supply of goods by description there is an implied condition that the goods will correspond with the description.</p> <p>(2) If the supply is by sample as well as by description, it is not sufficient that the goods correspond with the sample if the goods do not also correspond with the description.</p>
WA	FTA s37	<p>37 . Supply by description</p> <p>(1) Where there is a contract for the supply (otherwise than by way of sale by auction) by a person in the course of a business of goods to a consumer by description, there is an implied condition that the goods will correspond with the description, and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.</p>
ACT		-
NT	CAFTA s63	<p>63. Supply by description</p> <p>(1) Where there is a contract for the supply to a consumer of goods by description, being a supply by a person in the course of a business and otherwise than by way of sale by auction, there is an implied condition that the goods will correspond with the description; and, if the supply is by reference to a sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(2) A supply of goods is not prevented from being a supply by description for the purposes of subsection (1) by reason only that, being exposed for sale or hire, they are selected by the consumer.</p>
New Zealand	CGA s9	<p>9. Guarantee that goods comply with description –</p> <p>(1) Subject to section 41 of this Act, where goods are supplied by description to a consumer, there is a guarantee that the goods</p>

	<p>correspond with the description.</p> <p>(2) A supply of goods is not prevented from being a supply by description by reason only that, being exposed for sale or hire, they are selected by a consumer.</p> <p>(3) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and in section 10 of this Act will both apply.</p> <p>(4) Where the goods fail to comply with the guarantee in this section, –</p> <p>(a) Part 2 of this Act gives the consumer a right of redress against the supplier; and</p> <p>(b) Part 3 of this Act may give the consumer a right of redress against the manufacturer.</p>
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Table 5: Non-Excludable Implied terms as to merchantable quality

Jurisdiction	Provision	Merchantable Quality
Cth	TPA s71(1)	<p>Implied undertakings as to quality or fitness</p> <p>(1) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section:</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or</p> <p>(b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p> <p>(2) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the skill or judgment of the corporation or of that person</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a corporation as they apply to a contract for the supply of goods made by a corporation in the course of a business, except where that corporation is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
NSW	FTA s40Q	<p>(1) If a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by reason only of this section:</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made, or (b) if the consumer examines the goods before the contract is made – as regards any defect that the examination ought to have revealed.</p> <p>(2) If a person (<i>the supplier</i>) supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a</p>

		<p>business and the consumer, expressly or by implication, makes known:</p> <p>(a) to the supplier, or</p> <p>(b) to the person by whom any negotiations are conducted, any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that purpose is one for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or the person conducting the negotiations.</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for the supplier in the same way as they apply to a contract for the supply of goods made by a person in the course of a business, except where that person is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
NSW SGA	SGA s 19	<p>Subject to the provisions of this Act, and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:</p> <p>(1) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.</p> <p>(2) Where goods are bought by description from a seller who deals in goods of that description (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.</p> <p>(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.</p> <p>(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p>
Qld	-	-
SA	CTA s6	<p>6. (1) In every consumer contract for the sale of goods there is—</p> <p>(a) an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the</p>

case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and

(b) an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known to the consumer before or at the time when the contract is made.

(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.

(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied –

(a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or

(b) if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.

(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:

(a) the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and

(b) the apparent condition of the goods.

(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that the goods are reasonably fit for that purpose.

Tas	-	-
Vic	FTA s32I	<p>32I. Merchantable quality of goods supplied</p> <p>(1) In a contract of supply of goods by a supplier who supplies the goods in the course of a business, there is an implied condition that the goods are of merchantable quality.</p> <p>(2) For the purposes of sub-section (1), goods are of merchantable quality if they are as fit for the purposes for which goods of that kind are commonly purchased as is reasonable to expect having regard to-</p> <ul style="list-style-type: none"> (a) the price of the goods; and (b) the terms of the contract of supply; and (c) the apparent condition of the goods when the supply is made; and (d) all other relevant circumstances. <p>(3) The condition in a contract of supply of goods referred to in sub-section (1) does not extend to-</p> <ul style="list-style-type: none"> (a) defects of which the purchaser is aware when the supply is made; or (b) if the purchaser has examined the goods or a sample of the goods before the contract is made-defects that the examination ought to have revealed.
WA	FTA s38(1)(<p>38 . Implied undertakings as to quality or fitness</p> <p>(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section –</p> <ul style="list-style-type: none"> (a) as regards defects specifically drawn to the attention of the consumer before the contract is made; or

		<p>(b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p> <p>(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the supplier or of that person.</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a supplier as they apply to a contract for the supply of goods made by a supplier in the course of a business, except where that supplier is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
ACT		-
NT	CAFTA s64(1)	<p>64. Implied undertakings as to quality or fitness</p> <p>(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section -</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p> <p>(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to another person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose (whether or not that is a purpose for which such goods are commonly supplied) except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or of that other person.</p> <p>(3) <u>Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another as they apply to a contract for the supply of goods made by a supplier in the course of a</u></p>

		business, except where that other is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.
New Zealand	CGA s6	<p>6. Guarantee as to acceptable quality –</p> <p>(1) Subject to section 41 of this Act, where goods are supplied to a consumer there is a guarantee that the goods are of acceptable quality.</p> <p>(2) Where the goods fail to comply with the guarantee in this section, –</p> <p>(a) Part 2 of this Act may give the consumer a right of redress against the supplier; and</p> <p>(b) Part 3 of this Act may give the consumer a right of redress against the manufacturer.</p> <p>7. Meaning of “acceptable quality” –</p> <p>(1) For the purposes of section 6 of this Act, goods are of acceptable quality if they are as –</p> <p>(a) Fit for all the purposes for which goods of the type in question are commonly supplied; and</p> <p>(b) Acceptable in appearance and finish; and</p> <p>(c) Free from minor defects; and</p> <p>(d) Safe; and</p> <p>(e) Durable, –</p> <p>as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable, having regard to –</p> <p>(f) The nature of the goods;</p> <p>(g) The price (where relevant);</p> <p>(h) Any statements made about the goods on any packaging or label on the goods;</p> <p>(i) Any representation made about the goods by the supplier or the manufacturer;</p> <p>(j) All other relevant circumstances of the supply of the goods.</p> <p>(2) Where any defects in goods have been specifically drawn to the consumer's attention before he or she agreed to the supply, then notwithstanding that a reasonable consumer may not have regarded the goods as acceptable with those defects, the goods will not fail to comply with the guarantee as to acceptable quality by reason only of those defects.</p> <p>(3) Where goods are displayed for sale or hire, the defects that are to be treated as having been specifically drawn to the consumer's attention for the purposes of subsection (2) of this section are those disclosed on a written notice displayed with the</p>

		<p>goods.</p> <p>(4) Goods will not fail to comply with the guarantee of acceptable quality if—</p> <p>(a) The goods have been used in a manner, or to an extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods; and</p> <p>(b) The goods would have complied with the guarantee of acceptable quality if they had not been used in that manner or to that extent.</p> <p>(5) A reference in subsections (2) and (3) of this section to a defect means any failure of the goods to comply with the guarantee of acceptable quality.</p>
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Table 6: Non-Excludable Implied terms as to fitness for purpose

Jurisdiction	Provision	Fitness for purpose
Cth	TPA s71(2)	<p>(1) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section:</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p> <p>(2) Where a corporation supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the corporation or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him or her to rely, on the skill or judgment of the corporation or of that person</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a corporation as they apply to a contract for the supply of goods made by a corporation in the course of a business, except where that corporation is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
NSW	FTA s40Q	<p>(1) If a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by reason only of this section:</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made, or (b) if the consumer examines the goods before the contract is made – as regards any defect that the examination ought to have revealed.</p> <p>(2) If a person (<i>the supplier</i>) supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known:</p>

		<p>(a) to the supplier, or</p> <p>(b) to the person by whom any negotiations are conducted,</p> <p>any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that purpose is one for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or the person conducting the negotiations.</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for the supplier in the same way as they apply to a contract for the supply of goods made by a person in the course of a business, except where that person is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
NSW SGA	SGA s 19	<p>Subject to the provisions of this Act, and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows:</p> <p>(1) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose.</p> <p>(2) Where goods are bought by description from a seller who deals in goods of that description (whether the seller be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed.</p> <p>(3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.</p> <p>(4) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith.</p>
Qld	-	-
SA	CTA s6	6. (1) In every consumer contract for the sale of goods there is—

	<p>(a) an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and</p> <p>(b) an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known to the consumer before or at the time when the contract is made.</p> <p>(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.</p> <p>(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.</p> <p>(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied –</p> <p>(a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or</p> <p>(b) if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.</p> <p>(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:</p> <p>(a) the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and</p> <p>(b) the apparent condition of the goods.</p> <p>(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a <u>description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that</u></p>
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		the goods are reasonably fit for that purpose.
Tas	-	-
Vic	FTA s32IA	<p>32IA. Fitness of goods for purpose</p> <p>(1) If, in a contract of supply of goods by a supplier who supplies the goods in the course of a business, the purchaser expressly or by implication-</p> <p>(a) makes known to the supplier; or</p> <p>(b) in the course of any antecedent negotiations, makes known to a dealer or to a person acting on behalf of the supplier-</p> <p>the particular purpose for which the goods are required, there is an implied condition that the goods are reasonably fit for that purpose.</p> <p>(2) Sub-section (1) does not apply if the circumstances show that the purchaser does not rely, or that it is unreasonable for the purchaser to rely, on the skill or judgment of the supplier, dealer or other person.</p>
WA	FTA s38(2)	<p>38 . Implied undertakings as to quality or fitness</p> <p>(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section –</p> <p>(a) as regards defects specifically drawn to the attention of the consumer before the contract is made; or</p> <p>(b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p>

		<p>(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to the person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the consumer does not rely, or that it is unreasonable for him to rely, on the skill or judgment of the supplier or of that person.</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for a supplier as they apply to a contract for the supply of goods made by a supplier in the course of a business, except where that supplier is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.</p>
ACT SGA 1954	-	-
NT	CAFTA s64(2)	<p>64. Implied undertakings as to quality or fitness</p> <p>(1) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business, there is an implied condition that the goods supplied under the contract for the supply of the goods are of merchantable quality, except that there is no such condition by virtue only of this section –</p> <p>(a) as regards defects specifically drawn to the consumer's attention before the contract is made; or (b) if the consumer examines the goods before the contract is made, as regards defects which that examination ought to reveal.</p> <p>(2) Where a person supplies (otherwise than by way of sale by auction) goods to a consumer in the course of a business and the consumer, expressly or by implication, makes known to the supplier or to another person by whom any antecedent negotiations are conducted any particular purpose for which the goods are being acquired, there is an implied condition that the goods supplied under the contract for the supply of the goods are reasonably fit for that purpose (whether or not that is a purpose for which such goods are commonly supplied) except where the circumstances show that the consumer does not rely, or that it is unreasonable for the consumer to rely, on the skill or judgment of the supplier or of that other person.</p> <p>(3) Subsections (1) and (2) apply to a contract for the supply of goods made by a person who in the course of a business is acting as agent for another as they apply to a contract for the supply of goods made by a supplier in the course of a</p>

		business, except where that other is not supplying in the course of a business and either the consumer knows that fact or reasonable steps are taken to bring it to the notice of the consumer before the contract is made.
New Zealand	CGA s8	<p>8. Guarantees as to fitness for particular purpose –</p> <p>(1) Subject to section 41 of this Act, the following guarantees apply where goods are supplied to a consumer:</p> <p>(a) That the goods are reasonably fit for any particular purpose that the consumer makes known, expressly or by implication, to the supplier as the purpose for which the goods are being acquired by the consumer; and</p> <p>(b) That the goods are reasonably fit for any particular purpose for which the supplier represents that they are or will be fit.</p> <p>(2) Those guarantees do not apply where the circumstances show that –</p> <p>(a) The consumer does not rely on the supplier's skill or judgment; or</p> <p>(b) It is unreasonable for the consumer to rely on the supplier's skill or judgment.</p> <p>(3) This section applies whether or not the purpose is a purpose for which the goods are commonly supplied.</p> <p>(4) Part 2 of this Act gives the consumer a right of redress against the supplier where the goods fail to comply with any guarantee in this section.</p>

Table 7: Non-Excludable Implied terms as to compliance with sample

Jurisdiction	Provision	Sample
Cth	TPA s72	<p>Where in a contract for the supply (otherwise than by way of sale by auction) by a corporation in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample:</p> <p>(a) there is an implied condition that the bulk will correspond with the sample in quality;</p> <p>(b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and</p> <p>(c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.</p>
NSW	FTA s40R	<p>If in a contract for the supply (otherwise than by way of sale by auction or sale by competitive tender) by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample:</p> <p>(a) there is an implied condition that the bulk will correspond with the sample in quality, and</p> <p>(b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample, and</p> <p>(c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.</p>
NSW SGA	SGA s 20	<p>(1) A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect.</p> <p>(2) In the case of a contract for sale by sample:</p> <p>(a) there is an implied condition that the bulk shall correspond with the sample in quality,</p> <p>(b) there is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample,</p> <p>(c) there is an implied condition that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.</p>
Qld	-	-
SA	CTA s6	<p>6. (1) In every consumer contract for the sale of goods there is—</p> <p>(a) an implied condition on the part of the supplier that in the case of a sale the supplier has a right to sell the goods, and that in the case of an agreement to sell the supplier will have a right to sell the goods at the time when the property is to pass; and</p>

(b) an implied warranty that the goods will be free from any charge or encumbrance in favour of a third party not declared or known to the consumer before or at the time when the contract is made.

(2) In every consumer contract for the sale or supply of goods there is an implied warranty that the consumer will have and enjoy quiet possession of the goods for so long as the consumer is not in default under the contract.

(3) In every consumer contract for the sale or supply of goods by description there is an implied condition that the goods will correspond with the description, and if the contract is made by reference to sample as well as description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

(4) In every consumer contract for the sale or supply of goods there is an implied condition that the goods are of merchantable quality but no such condition is implied –

(a) as regards defects in goods of which the supplier or an agent of the supplier could not reasonably have been aware at the time the contract was made; or

(b) if the consumer has examined the goods or a sample of the goods, as regards defects that the examination ought to have revealed.

(5) For the purposes of this section goods are of merchantable quality if they are as fit for the purpose for which goods of that description are ordinarily used as is reasonable to expect having regard to the following considerations:

(a) the price of the goods and the terms and conditions of the relevant consumer contract and the circumstances surrounding the formation of the contract; and

(b) the apparent condition of the goods.

(6) If the consumer expressly, or by implication, makes known to the supplier, or a servant or agent of the supplier the particular purpose for which the goods are required, so as to show reliance on the supplier's skill or judgment and the goods are of a description which it is in the course of the supplier's business to supply, there is an implied condition in the consumer contract that the goods are reasonably fit for that purpose.

Tas	-	-
Vic	FTA s32HA	<p>32HA. Supply of goods by sample</p> <p>(1) The conditions set out in sub-section (3) are implied in a contract of supply of goods in which there is a term, express or implied, to the effect that the supply is a supply of goods by sample.</p> <p>(2) The conditions set out in sub-section (3) are implied in a contract of supply of goods if, before entering into the contract, the supplier, or in the course of any antecedent negotiations to a supply of goods, a dealer or a person acting on behalf of the supplier-</p> <p>(a) shows to the purchaser a sample of goods; and</p> <p>(b) the purchaser is induced by the showing of the sample to purchase the goods or goods of the same kind.</p> <p>(3) The conditions implied in a contract of supply of goods under sub-section(1) or (2) are-</p> <p>(a) an implied condition that the goods will correspond with the sample in quality; and</p> <p>(b) an implied condition that the purchaser will have a reasonable opportunity of comparing the goods with the sample; and</p> <p>(c) an implied condition that the goods will be free from any defect, rendering them unmerchantable-</p> <p>(i) that would not be apparent on reasonable examination of the sample;</p> <p>and</p> <p>(ii) of which the purchaser is not aware when the contract is made.</p> <p>(4) For the purposes of this section, a contract of supply of goods or services may be a contract of supply by sample even though the sample is not part of the bulk of the goods or services.</p>
WA	FTA s39	<p>39 . Supply by sample</p> <p>Where in a contract for the supply (otherwise than by way of sale by auction) by a person in the course of a business of goods to a consumer there is a term in the contract, expressed or implied, to the effect that the goods are supplied by reference to a sample –</p> <p>(a) there is an implied condition that the bulk will correspond with the sample in quality;</p> <p>(b) there is an implied condition that the consumer will have a reasonable opportunity of comparing the bulk with the sample;</p>

		and (c) there is an implied condition that the goods will be free from any defect, rendering them unmerchantable, that would not be apparent on reasonable examination of the sample.
ACT	-	-
NT	CAFTA s65	65. Supply by sample Where in a contract for the supply (otherwise than by way of sale by auction) by a person in the course of business of goods to a consumer there is a term in the contract, express or implied, to the effect that the goods are supplied by reference to a sample there is an implied condition - (a) that the bulk will correspond with the sample in quality; (b) that the consumer will have a reasonable opportunity of comparing the bulk with the sample; and (c) that the goods will be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample.
New Zealand	CGA s10	10. Guarantee that goods comply with sample – (1) Subject to section 41 of this Act, the following guarantees apply where goods are supplied to a consumer by reference to a sample or demonstration model: (a) That the goods correspond with the sample or demonstration model in quality; and (b) That the consumer will have a reasonable opportunity to compare the goods with the sample. (2) If the goods are supplied by reference to a sample or demonstration model as well as by description, the guarantees in this section and section 9 of this Act will both apply. (3) Part 2 of this Act gives the consumer a right of redress against the supplier where the goods fail to comply with any guarantee in this section.