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Supplies of goods and services – replacement of laws on implied conditions and warranties

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Do you use standard terms and conditions of supply or purchase orders in your business? If you are a supplier who supplies:

- goods or service to a person (including a corporation) if the amount paid or payable for the goods or services is \$40,000 or less (irrespective of the nature of goods or services)
- goods or services to a person (including a corporation) if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption (irrespective of price)
- a vehicle to a person (including a corporation) for use in the transport of goods on public roads (irrespective of price)

New laws on consumer guarantees may affect you.

Previous laws on implied conditions and warranties in the supply of goods and services have been replaced by a new national regime of 'consumer guarantees'. 'Consumer guarantees' do not only apply to supplies to individual 'consumers', but can extend to supplies to other businesses. These new laws took effect from 1 January 2011. This update contains a summary of some of the key provisions concerning consumer guarantees.

These changes are only a part of a number of changes following the introduction of a single national consumer law, the Australian Consumer Law, which we alerted to in our previous update (click [here](#) to read). Under this new regime, from 1 January 2011 the *Trade Practices Act 1974* (TPA) was renamed the *Competition and Consumer Act 2010*. The Australian Consumer Law (ACL) is a schedule to the *Competition and Consumer Act 2010*.

Who is affected?

Suppliers who supply:

- goods or service to a person (including a corporation) if the amount paid or payable for the goods or services is \$40,000 or less (irrespective of the nature of goods or services)
- goods or services to a person (including a corporation) if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption

(irrespective of price)

- a vehicle to a person (including a corporation) for use in the transport of goods on public roads (irrespective of price).

Supplies of goods are not affected if the person acquired the goods for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce.

These new laws on consumer guarantees do not apply to supplies of financial products and services, or supplies of interests in land. The guarantees apply if goods are supplied in trade or commerce. In other words, they do not apply to supplies provided by individuals outside a business context.

What is new?

While some existing TPA provisions have been restated in the new legislation, the ACL also introduces some new concepts.

'Consumer guarantees'

Existing implied conditions and warranties in the TPA (eg. a condition that the goods are fit for purpose, a warranty that the consumer enjoys quiet possession) have been replaced with similar statutory 'consumer guarantees'. In addition, the following new consumer guarantees have been introduced:

- for services, a guarantee that services will be provided within a reasonable time
- for goods, a guarantee as to the availability of repairs and spare parts
- for goods, a guarantee that any 'express warranty' is complied with.

Importantly, an 'express warranty' is defined in the ACL as including, in relation to goods, an undertaking or representation that relates to the goods and other matters concerning the goods (eg. supply of associated services or parts required for the goods). Therefore, 'express warranties' would include warranties for defects that are commonly given by suppliers to consumers when selling goods to consumers. 'Express warranties' would also include any pre-contractual statements when promoting the goods.

Like the old law on implied conditions and warranties, the new law provides that consumer guarantees cannot be excluded by contract.

However, like under the TPA, suppliers and manufacturers may limit (but not exclude) their liability in respect of goods not ordinarily acquired for personal, domestic or household use or consumption that fail to meet the standards required by consumer guarantees.

Some significant consequences of the introduction of 'express warranties' include the following:

- Suppliers of goods are not able to exclude liability for pre-contractual statements.
- Where a supplier of goods (other than a supplier that supplies goods not ordinarily acquired for personal, domestic or household use or consumption) provides express

warranties (such as providing a warranty for defect or making pre-contractual statements about goods) it may not limit its liability in respect of such warranties.

Enforcement of rights

Under the old law, consumers were required to enforce their rights for breaches of implied conditions and warranties as breaches of contract. Under the ACL, any failure by a supplier of a statutory consumer guarantee is enforceable as a breach of the ACL.

When do the changes come into effect?

The 'consumer guarantee' provisions discussed above came into effect on 1 January 2011.

What should businesses do?

Businesses should determine the impact of the new laws on their operations, including identifying any new risks and reviewing their contracts.

For example, the introduction of 'express warranties' for certain supplies of goods include the following:

- Since suppliers of goods are not able to exclude liability for pre-contractual statements, this requires a review of a business' marketing practices. Businesses also need to review their contracts and amend them if necessary.
- Where a supplier of goods (other than a supplier that supplies goods not ordinarily acquired for personal, domestic or household use or consumption) provides express warranties (such as providing a warranty for defect or making pre-contractual statements about goods) it may not limit its liability in respect of such warranties.

For supply of services contracts that do not state when services are to be provided, specify the time for supply to avoid disputes about what is a 'reasonable time'.

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