

Approaching implied terms (Victoria)

Step 1

Consumer contract?
(4B TPA; 32D FTA)

Step 2

No

GA
Have terms been excluded?

Yes

TPA/FTA
Is supplier a corporation?

Yes

No implied terms

No

Yes

TPA and FTA apply

No

Only FTA applies

Step 3

Title

Description

Fitness

Merch Quality

Sample

Have any been breached?
Remedies are for breach of contract

Step 1

Determining whether the contract is a consumer contract? This is vital because it determines whether the non-excludable FTA and/or TPA regimes apply.

Step 2

If not a consumer contract then the only possible statutory implied terms will come from the GA. As these terms may be excluded for the parties it is important to check for an effective exclusion clause.

If there is a consumer contract then the TPA, FTA or both will apply (the GA will not apply: s 32F FTA). It is necessary to ask whether or not the supplier is a corporation (or the extension provisions of the TPA apply). If the answer is yes then both the TPA and FTA implied terms regimes apply; if no then only the FTA applies.

Step 3

Examine the relevant implied terms:

- Title: s 69 TPA; s 32G & 32GA FTA; s 17 GA
- Conformity with description: s 70 TPA; s 32H FTA; s 18 GA
- Fitness for purpose: s 71(2) TPA; s 32IA FTA; s 19(a) GA
- Merchantable quality: s 71(1) TPA; s 32I FTA; s 19(b) GA
- Correspondence with sample: s 72 TPA; s 32HA FTA; s 20 GA