

## **New Statutory Guarantee of Acceptable Quality**

A new national regime of statutory consumer guarantees starts on 1 January 2011 called 'The Australian Consumer Law'. Sales of horses by businesses are caught by the new guarantees which do not apply to private sales. It therefore remains crucially important for buyers buying privately to use a written contract to record their rights.

The guarantees take the place of the current conditions and warranties implied in agreements for the sale of horses.

The statutory guarantee that any horse sold will be of an "acceptable quality" is very significant for businesses. The meaning of this expression is set out in the new law. Adapting the definition to a horse sale, it means that the horse must be:

- fit for "*all the purposes*" for which horses "*of that kind are commonly supplied*"; and
- acceptable in appearance; and
- free from "*defects*"; and
- "*safe*".

The test of whether a horse is of "acceptable quality" is also set out in the new law and is essentially this: Would a 'reasonable consumer' fully acquainted with the condition of the horse "*including any hidden defects*" regard the horse as acceptable considering: the price; any representation by the seller; and any other relevant circumstances relating to the sale.

The relevancy of any hidden defect as a factor in deciding whether the horse is of an acceptable quality is a worrying development. For example, if the horse was not lame when sold, but became clinically lame soon afterwards due to an undiagnosed degenerative bone disease existing at the time of sale, the horse may very well be of an unacceptable quality, especially if the horse was young, the price was high and his future was high level performance work. Another worrying development concerns the mention of safety. Inexperienced horse buyers can unfortunately form

a view that a horse is unsafe just based on one incident. Business seller's need to be particularly cautious when selling to such buyers.

The consumer purpose of this new guarantee is revealed by the fact that any defect specifically drawn to the buyer's attention is excluded, so that a horse cannot be of unacceptable quality by reason only of such a disclosed defect. Business sellers therefore need to weigh the risks of disclosing and not disclosing a known defect. What is a 'defect' is not defined by the new law, so what is and is not a defect will largely depend on the purpose for the horse and common sense.

A significant protection for the seller is that if an examination of horse "*ought reasonably to have revealed*" that the horse was not of acceptable quality, it cannot fail to be of acceptable quality. While business sellers fear to lose a sale due to a pre-purchase vet failing to evaluate findings realistically in light of the horse's future use, a vet's intervention might now afford protection from what would otherwise be a breach of the guarantee.

A breach of the guarantee entitles the buyer to reject the horse or seek compensation from the seller for the reduction in value of the horse below the price paid. Even if the breach is undisputed, business sellers need to know that the right to reject the horse and obtain a refund is lost if the horse is not rejected within a reasonable period. What is a reasonable period depends on the length of time it would take the buyer to become aware of the breach of the guarantee and this would depend on the circumstances of each case. Very simply, the longer the time between sale and complaint, the greater the risk that it is too late to reject the horse and get a refund.

Studs, horse brokers and professional horse trainers will now need considerable business acumen, as well as sound legal advice, to reduce the burden that this new statutory guarantee imposes on them to guarantee buyer satisfaction.

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