

Trade Practices Alert October 2010

New Mandatory Reporting for Consumer Goods & Product Related Services

Businesses need to prepare to meet the requirements of the new mandatory reporting system introduced by the *Trade Practices Amendment (Australia Consumer Law) Act (No.2) 2010 (Act)*. The mandatory reporting system takes effect from **1 January 2011** and requires suppliers of consumer goods and product related services to give notice of any deaths, serious injuries or illnesses related to consumer goods in certain circumstances.

A Consultation Draft on the mandatory reporting requirements (**Draft**) has been produced by the Australian Competition & Consumer Commission (**ACCC**) and can be found at <http://www.productsafety.gov.au/content/index.phtml/itemId/982086>.

What are consumer goods and product related services?

Under the Act, consumer goods are "goods that are intended to be used, or are of a kind likely to be used, for personal, domestic or household use or consumption". Product related services are services for, or relating to, the installation, maintenance, repair, cleaning, assembly or delivery of consumer goods and include any other services that relate to the supply of consumer goods. The mandatory reporting provisions of the Act apply to these goods and services.

When does the obligation to give notice arise?

The obligation to give notice arises when:

- a supplier of consumer goods, or product related services relating to consumer goods, becomes aware (from any source, including a consumer) of the death, serious injury or illness of a person; and

- the supplier either:

- considers that the death, serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods; or
- becomes aware that another person considers that the death or serious injury or illness was caused, or may have been caused, by the use or foreseeable misuse of the consumer goods.

The obligation to give notice applies irrespective of the country in which the death, serious injury or illness occurs and whether or not the consumer goods were being used before or at the time of the death, serious injury or illness. The supplier's obligation to give notice arises in the circumstances referred to above regardless of whether they supplied the consumer goods themselves (for example, blinds) or whether they supplied product related services in respect of those goods (for example, installation services in respect of blinds). Also, the obligation continues even if another supplier has already given notice.

When is notice not required?

Notice is not required to be given where it is clear that the death, serious injury or illness was not caused, or it was very unlikely caused, by the use or foreseeable misuse of the consumer goods. It is also not required where the supplier or another person is required to notify the death, serious injury or illness pursuant to other laws or an industry code of practice specified in the regulations to the Act.

What is a serious injury or illness?

Under the Act, a serious injury or illness means "an acute physical injury or illness that requires medical or surgical treatment by, or under the supervision of, a medical

practitioner or nurse." The Draft gives examples including a serious burn, deep cut, broken bone, choking, internal bleeding and poisoning.

Required action

Where notice is required to be given, the supplier must do so in writing, within **2 days** of becoming aware of the circumstances referred to above, to the "Commonwealth Minister" (**Minister**). We have been informed that the responsible person is the Parliamentary Secretary to the Treasurer, the Hon David Bradbury MP. However, notice may simply be given by submitting an ACCC form online which will be available via the website www.productsafety.gov.au.

The Act requires that the notice include specified information, including the details of the consumer goods and/or product related services involved, the circumstances of the death, serious injury or illness, the nature of the serious injury or illness and any action the supplier has taken or intends to take in respect of the consumer goods or product related services.

The giving of notice is not to be taken as an admission of liability by the supplier.

Confidentiality

A notice given under the Act will be treated confidentially unless the supplier consents to disclosure, subject to some exceptions. The exceptions include disclosure which is considered by the Minister to be in the public interest, disclosure which is authorised by law or reasonably necessary for the enforcement of the criminal law and disclosure to another responsible Minister or the regulator.

For further information, please contact:

David Gaszner

Partner

+61 8 8236 1354

dgaszner@thomsonslawyers.com.au

Norman Fryde

Partner

+61 3 8080 3568

nfryde@thomsonslawyers.com.au

Peter Le Guay

Partner

+61 2 8248 3424

pleguay@thomsonslawyers.com.au

Stephen Voss

Partner

+61 8 8236 1305

svoss@thomsonslawyers.com.au

Catherine Chant

Special Counsel

+61 2 8248 3427

cchant@thomsonslawyers.com.au

David Lieberman

Consultant

+61 2 8248 5828

dliberman@thomsonslawyers.com.au

Matt Murphy

Associate

+61 8 8236 1408

mmurphy@thomsonslawyers.com.au

Katarina Smolcic

Lawyer

+61 2 8248 3439

ksmolcic@thomsonslawyers.com.au

Penalties

It is an offence for a person to fail to give notice as, and when, required by the Act and a court may impose pecuniary penalties of up to \$16,500 for a body corporate and \$3,300 for a person other than a body corporate. The offence is one of strict liability.

What can you do to prepare?

Suppliers of consumer goods and product related services should ensure that they have systems in place, including trained staff, to expeditiously:

- record any reports of death, serious injury or illness associated with consumer goods supplied by them or to which their product related services relate; and
- refer such reports to a manager or other appropriate person for a determination to be made as to whether notification to the Minister is required under the Act.

If you need advice about the mandatory reporting requirements and/or the creation of policies and procedures for complying with the requirements, please contact our team listed below.

Katarina Smolcic
Lawyer

Catherine Chant
Special Counsel