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### MANDATORY REPORTING OF CONSUMER GOOD SAFETY INCIDENTS TO ACCC

From 1 January 2011, suppliers of consumer goods and related services will be required to make a report to the Australian Competition and Consumer Commission (ACCC) if they become aware a consumer product they supplied or serviced has caused, or may have caused, serious injury, illness or death. Mandatory safety reporting was introduced via the *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010 (Act)* in an attempt to identify significant consumer product hazards in a timely fashion.

In order to meet the mandatory reporting requirements, suppliers need to introduce internal policies, processes and procedures to ensure that an appropriate person within the organisation quickly receives and assesses information about safety incidents associated with consumer goods or related services and, if relevant, is able to inform ACCC within two days of becoming aware of the incident.

#### Who must report?

All participants in the supply chain of a consumer good which has been associated with a death, serious injury or illness, who has become aware of the incident, must report. This includes a retailer, dealer, distributor, installer, repairer, importer, manufacturer and/or exporter of the consumer goods in question. The laws specifically state any person involved in product related services must also report incidents, for example, an installer of blinds will be required to report an incident resulting in death, serious injury or illness associated with the blinds, regardless of whether it was related to the service the installer provided.

#### When to report?

Suppliers are required to report, in writing, the necessary information to the Minister of Consumer Affairs, via the ACCC, within two days of becoming aware the consumer good or product service in question, caused or may have caused a death, serious injury or illness. The clock starts ticking even when the supplier becomes aware of the incident on a day which is not a business day.

#### What incidents should be reported?

All deaths, serious injuries or illnesses must be reported. Serious injury or illness is defined in the Act to mean an acute physical injury or illness requiring medical or surgical treatment by, or under the supervision of, a qualified doctor or nurse. A serious injury or illness can include an external injury (such as serious burn, deep cut, broken bone, choking or serious fracture), internal injury (such as internal bleeding) or an illness (such as poisoning).

An incident resulting in death, serious injuries or illnesses must be reported where the supplier believes the incident was caused by the use or misuse of the consumer good or is aware that a person, other than the supplier, believes that the incident was caused by the use or misuse of the consumer good.

All new incidents relating to the same consumer good must also be reported.

Reporting is required whether or not the consumer goods were used before, or at the time a death, serious injury or illness occurred and regardless of whether the incident occurred in or outside Australia.





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## How will a supplier become “aware” of an incident?

A supplier is defined in the Act to be “aware” upon receiving information from any source. Examples include, but are not limited to, direct notification from a consumer through a complaint, direct notification from industry or consumer organisation, direct notification by a supplier or from experts reports.

## Penalties for not reporting

A supplier who fails to report incidents may be found guilty of a criminal offence and be liable to a penalty of \$16,500 for a body corporate or \$3,300 for a person other than a body corporate. This is an offence of strict liability and the court does not need to determine whether the person intended to notify before finding them guilty.

## Reporting is not an admission of guilt and is confidential

Reporting is not to be taken as an admission by the supplier of any liability in relation to the death, serious injury or illness of any person.

The laws provide that information given in reports must not be disclosed unless the supplier consented to disclosure. However, sharing of information between Ministers and Regulators may be allowed. Disclosure may also be allowed where the Minister for Consumer Affairs considers the disclosure is in the public interest, required or authorised under law and reasonably necessary for the enforcement of criminal law or of a law imposing a pecuniary penalty.

## When notification is not required

Notification is not required where it is clear or very unlikely that the incident was caused by the use or misuse of the consumer good. It is also unnecessary where the supplier or another person is required to report the incident under another law or regulation.

At this stage, it is anticipated ACCC will exempt reporting for incidents relating to food, motor vehicles and therapeutic goods.

## Information required within notifications

When reporting, suppliers will need to submit a mandatory report via the ACCC’s online form.

The following information will be required on the form:

- identification of the consumer goods or the product related services and the consumer goods to which the services relate; and
- the following details, to the extent that they are known by the supplier at the time of the reporting:
  - when and in what quantities the consumer goods were manufactured, supplied in Australia or imported into Australia or exported from Australia;
  - when the product related services were supplied (where relevant);
  - the circumstances surrounding how the death, serious injury or illness occurred;
  - the nature of any serious injury or illness suffered; and
  - any action the supplier has taken or intends to take in relation to the consumer goods and/or services.

## Internal policies and procedures to be introduced

To comply with notification requirements, suppliers should review and/or introduce the following policies and procedures:

- Record all consumer complaints and other sources of information on consumer safety incidents. The record should include who made the complaint or passed on the information, their contact details, a description of the product, details of the nature of the product and details of the severity of the incident.
- Institute a mechanism whereby complaints or information that may trigger mandatory reporting requirements are escalated to the appropriate area within the business for further investigation.
- Assign a staff member to review complaints or information to determine what action is required. The staff member must be able to assess whether the complaint or information relates to a safety related hazard including whether the product has been associated with death or serious injury or illness.
- Institute a process whereby the information can be escalated to the legal division for advice.

Maddocks has particular expertise in advising on consumer protection laws. With the mandatory reporting requirements coming into effect from next year, Maddocks is available to provide legal advice on internal processes and policies that should be introduced to comply with reporting requirements and to advise when suppliers should report incidents to ACCC. Further, it should be noted that such safety incidents may also trigger obligations under Occupational Health & Safety (OH&S) legislation in the relevant State or Territory. Maddocks can also provide advice in relation to OH&S matters.



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