



Australian
Competition &
Consumer
Commission

A guide to the mandatory reporting law in relation to consumer goods

**Suppliers of consumer goods and related services are required
to report deaths, serious injuries or illnesses associated with
consumer goods**

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Australian Competition and Consumer Commission

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Introduction	1
Key features of the mandatory reporting regime	2
Mandatory reporting guide	3
1 Mandatory reporting obligations.....	3
1.1 When is a mandatory reporting obligation triggered?	3
1.2 Who is required to report incidents where a consumer good is associated with a serious illness, injury or death?	4
1.3 Can an agent submit the notice on behalf of one or more suppliers?	4
1.4 What are ‘consumer goods’ and ‘product related services’?	5
1.5 What is a ‘serious injury or illness’?	5
1.6 How might a supplier ‘become aware’ of a death, serious injury or illness?	6
1.7 How quickly must a supplier report an incident?	7
2 Circumstances for not reporting.....	8
2.1 Pesticides and veterinary medicines	8
2.2 Biological agents	8
2.3 Therapeutic goods.....	9
2.4 Reports to a coroner.....	9
2.5 Motor vehicles	9
2.6 Food.....	9
2.7 Electrical and gas appliances	9
3 Notice requirements	10
3.1 What information is to be provided in the written notice?	10
3.2 How must a supplier report an incident?	11
3.3 ACCC response to the notice.....	11
4 Supplier liability implications.....	12
5 Confidentiality of notices.....	12
6 Penalties	13
7 Case study	13
8 Appendix – Regulation 92, Competition and Consumer Regulations 2010....	17

Introduction

In June 2010, the second part of the Australian Consumer Law was passed as the *Trade Practices Amendment (Australia Consumer Law) Act (No.2) 2010* (in this guide, this Act will be referred to as the ACL). The ACL introduced a single, national consumer law which will apply the same way nationally as in each state and territory.

The ACL introduces new laws relating to consumer product safety and in particular a mandatory reporting regime that requires suppliers to report consumer product related incidents where a death or serious injury or illness has resulted.

The mandatory reporting requirement stems from a Productivity Commission (PC) Report. The *Review of the Australian Consumer Product Safety System*¹ was released in February 2006 and noted that an effective product safety system should identify significant hazards posed by consumer products in a timely fashion.

One of the issues the PC canvassed when considering how significant hazards could be identified was the issue of imposing reporting requirements on suppliers. It was recognised that suppliers will often have more information concerning the safety of their products than government and that having a reporting requirement would give governments access to broader and more timely sources of information. Such access would improve the responsiveness of the regulatory regime to existing and emerging product-related hazards.

In the PC's view, requiring suppliers to notify government of products associated with serious injury or death is likely to be a cost effective way of enhancing the ability of regulators to identify the most hazardous consumer products.

The PC report recommended that governments require suppliers to report products which have been associated with serious injury or death to the appropriate regulator. These recommendations have been taken up in the ACL.

The ACL sets out the mandatory reporting requirements for consumer goods and product related services. It also outlines confidentiality requirements for notices provided under the mandatory reporting requirements.

This guide has been developed by the Australian Competition and Consumer Commission (ACCC). It has been designed to assist businesses to understand the mandatory reporting laws. It is current as the law presently stands but may be updated over time.

The purpose of the guide is to explain the mandatory reporting laws as simply as possible. However, it is not a substitute for the actual words of the ACL. It is intended to provide general information only and is not intended to provide legal advice.

¹ *Review of the Australian Consumer Product Safety System (2006) available from <http://www.pc.gov.au>*

Key features of the mandatory reporting regime

Key features of the mandatory reporting regime are as follows:

- When a supplier becomes aware of an incident where a person has suffered death or serious injury or illness that was caused by, or may have been caused by, a consumer good, the supplier must provide a written report (notice) to the Commonwealth Minister.
- The mandatory reporting requirements apply to suppliers of consumer goods and suppliers of product related services associated with consumer goods.
- The mandatory reporting requirements do not apply in some cases where other laws or codes require the supplier to notify a different government entity of the death, serious injury or illness. Suppliers are only exempt from the ACL mandatory reporting requirements if the laws or codes giving rise to the exemption are listed in Regulation 92 of the Competition and Consumer Regulations 2010.
- The laws apply whether or not the consumer goods were being used before or at the time the death, serious injury or illness occurred.
- The notice must be provided to the Commonwealth Minister within two days of becoming aware, and must include certain information.
- Where a supplier has provided a notice, it is not to be taken for any purpose as an admission by the supplier of any liability in relation to the consumer goods, product related services or the death or serious injury or illness of any person.
- The information provided in the notice must not be disclosed without consent except under exceptional circumstances defined in the law.
- Generally, the circumstances when disclosure of all or part of a notice is allowed relate to the sharing of information between relevant Ministers and regulators.
- Disclosure is also allowed if the Commonwealth Minister considers that the disclosure is:
 - in the public interest; or
 - required or authorised by or under law; or
 - reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

Mandatory reporting guide

1 Mandatory reporting obligations

Suppliers are required to report consumer goods associated with the death or serious injury or illness of any person.

1.1 When is a mandatory reporting obligation triggered?

Individual suppliers are responsible for reporting incidents where consumer goods have been associated with a death or serious injury or illness of any person.

Broadly there are two triggers to the reporting requirement for suppliers, both of which must be present before the supplier is required to report:

- The goods in question are consumer goods;
- A supplier of such consumer goods, or services related to them, has become aware that a person has suffered death or serious injury or illness.

The second trigger, that the supplier has become aware of a death, serious injury or illness only triggers the reporting requirement if either:

1. The supplier 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.

OR

2. The supplier becomes aware that a person other than the supplier 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.

Provided at least one of these two elements of the second trigger is met, along with the first trigger, a supplier is required to report the incident.

The requirement applies to incidents that the supplier becomes aware of after 31 December 2010, even if the incident occurred, or the good was supplied, before that date. The requirement applies regardless of whether or not the consumer goods were being used before or at the time the death, serious injury or illness occurred.

The reporting requirement applies to ‘use or foreseeable misuse’ of a consumer good. This includes the use of consumer goods for their primary, normal or intended purpose; using the goods for an unintended purpose; or misusing the goods. Suppliers need to report deaths, serious injuries or illnesses believed to be caused by a consumer good however it might have been used and regardless of whether there were defects with the good or whether misuse of the good may have contributed to the cause of the incident.

There are some circumstances where a supplier is not required to report. These are outlined in section two of this Guide.

Product related services reporting obligations

Individual suppliers of product related services are required to report incidents where the consumer goods that their services relate to have been associated with a death, serious injury or illness of any person. For example, a supplier who installs blinds would be required to report a serious injury or death that was associated with the blinds, regardless of whether the supplier perceives the injury, illness or death to have related to a problem with the service that was rendered.

The triggers for reporting such incidents are the same as those outlined above.

1.2 Who is required to report incidents where a consumer good is associated with a serious illness, injury or death?

All participants in the supply chain of a consumer good that has been associated with a death, serious injury or illness are required to comply with the reporting requirement upon becoming aware of an incident. This includes a retailer, dealer, distributor, installer, repairer, importer, manufacturer and/or exporter of the consumer goods in question.

Similarly all participants in the supply chain for product related services linked to the goods that are associated with the death, injury or illness of a person, are required to report the incident.

Where the reporting requirements apply, a supplier is only required to report the necessary information on the first occasion it became aware the consumer goods in question have caused or may have caused a death, serious injury or illness. The supplier is not required to report each and every time it is advised of the same incident, even if the information comes from a different source each time. When additional information is obtained it should be provided to the ACCC.

Note that if a supplier becomes aware that the same type of consumer good or product related service has been involved in another incident, the supplier is required to report the new incident to the ACCC.

1.3 Can an agent submit the notice on behalf of one or more suppliers?

A supplier may authorise an agent to submit a mandatory report on their behalf. Such an agent may submit a mandatory report on behalf of multiple suppliers associated with the relevant consumer goods. The ACCC would then not require mandatory reports to be submitted by those suppliers in relation to this same incident if:

- The agent informs the ACCC in writing, on the same day as submitting the report, that they are submitting the report on behalf of one or more identified suppliers
- The agent certifies that they will provide a copy of the submitted report to all of the identified suppliers
- The agent provides written consent for the ACCC to disclose the details of the submitted report to each of the identified suppliers on request.

An example of an agency arrangement would be where a manufacturer becomes aware of a reportable incident and in submitting the mandatory report to the ACCC, indicates that they are also reporting on behalf of all of the retailers of the consumer good associated with the incident. The manufacturer would identify all of these retailers; certify that they will provide each of them with a copy of the submitted report, and consent to the ACCC disclosing the content of the report to each of them. This arrangement would only apply for this specific incident and mandatory report. The ACCC would then not require duplicate reports of this same incident from the identified retailers.

1.4 What are ‘consumer goods’ and ‘product related services’?

‘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.

‘Consumer goods’ do not include products in production that have not been released for supply to consumers.

‘Product related services’ include:

- (a) the installation of consumer goods; or
- (b) the maintenance, repair or cleaning of consumer goods; or
- (c) the assembly of consumer goods; or
- (d) the delivery of consumer goods: and
- (e) without limiting paragraphs (a) to (d), any other service that relates to the supply of consumer goods.

The reporting requirement only applies with respect to product related services and not more broadly to ‘services’ or to ‘consumer services’.

1.5 What is a ‘serious injury or illness’?

Serious injury or illness is defined to mean an acute physical injury or illness requiring medical or surgical treatment by, or under the supervision of, a qualified doctor or nurse. The medical or surgical treatment can be provided in a hospital or clinic, or in a similar place such as a regional or rural clinic where in the circumstances hospitalisation may not always be possible.

A ‘serious injury or illness’ does not include an ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development, or the recurrence of such an ailment, disorder, defect or morbid condition. Chronic ailments, disorders, defects or morbid conditions are not reportable. For example, a long term exposure to a substance in a consumer good that causes a chronic disease, such as cancer, is not reportable.

However, if a consumer good causes a death or acute injury or illness requiring medical treatment of a person with a pre-existing sensitivity, then this is reportable. For

example, if a person with a pre-existing allergy to a substance suffers an anaphylactic reaction after contact with a consumer good containing that substance, a report to the ACCC will be required.

For the purposes of the reporting requirements, a serious injury or illness can include:

- an external physical injury, such as a serious burn, deep cut, broken bone, choking or serious fracture;
- an internal injury, such as internal bleeding;
- an acute illness, such as poisoning;
- a severe allergic reaction, such as anaphylaxis or contact dermatitis.

The death, injury or illness may have occurred to a person in Australia or elsewhere. The requirement also applies regardless of the country in which the consumer good involved in the incident was manufactured or sold. If a supplier has supplied that kind of consumer good in Australia and the reporting criteria are satisfied, then a death or serious injury or illness that occurred outside of Australia must be reported.

Injury or illnesses requiring treatment from health professionals other than medical practitioners or nurses do not satisfy the definition of ‘serious injury or illness’. A broken tooth requiring treatment by a dentist, for example, does not require a report to the ACCC. However, if the injury required treatment by a medical practitioner or nurse, a report would be required.

A “near-miss” does not require a mandatory report. For example, a house fire caused by a consumer good but in which no-one was harmed, is not reportable to the ACCC. However, suppliers are encouraged to contact the relevant State/Territory fire safety authority if they become aware of such an incident. Other “near-misses” involving consumer goods can be voluntarily reported to the ACCC via the Product Safety Australia website (www.productsafety.gov.au) but these are not classified as mandatory reports.

1.6 How might a supplier ‘become aware’ of a death, serious injury or illness?

A supplier will ‘become aware’ of a death or serious injury upon receiving information from any source. A supplier may become aware of an incident through, for example:

- direct notification by a consumer, through a complaint or simply through information the consumer provides in writing or verbally
- direct notification by a non-government organisation, for example, an industry or consumer organisation
- direct notification by a supplier, for example, an international headquarters
- through information associated with a recall or other measure being initiated by a different organisation

- direct notification by a re-supplier, repairer, or insurer of the consumer goods
- receipt of reports from experts, test reports, scientific or other relevant information

Awareness does not require written notification; the legislation requires the supplier to notify the ACCC when an issue comes to light regardless of how it is conveyed.

A supplier becomes aware as soon as a person within their organisation has been notified of the incident. Mandatory reporting of product-related death, serious injury or illness should be incorporated into the organisation’s complaint-handling procedures, systems and policies.

Suppliers are not required to make themselves aware of anything that they would not become aware of in the ordinary course of their business. However, having received relevant information a supplier will be considered to have ‘become aware’ of the incident and therefore would be required to report.

If the veracity of information is uncertain, suppliers are nonetheless advised to report. However, suppliers are encouraged to include any concerns about the truth of the information in the report to the ACCC.

1.7 How quickly must a supplier report an incident?

Where the reporting requirement applies, a supplier is required to report the necessary information to the Commonwealth Minister in writing within two days of becoming aware that the consumer goods or product related services in question have caused or may have caused a death, serious injury or illness.

The two day period operates according to the *Acts Interpretation Act 1901* and does not include the day on which the supplier becomes aware of the incident. The two day period begins at the start of the next day. Additionally, if the due date falls on a Saturday, Sunday or public holiday, then the reporting period is extended until the next business day.

The following table explains the two day reporting requirement in more detail.

<i>Supplier becomes aware of reportable incident on:</i>	<i>Mandatory report to ACCC due by midnight of the next^{1,2}:</i>
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday
Friday	Monday
Saturday	Monday
Sunday	Tuesday

Notes:

1. The report becomes overdue after midnight in the supplier’s location.
2. If the due day specified above is a public or bank holiday in the supplier’s location, then the mandatory report is due on the next business day.

In order to meet the mandatory reporting requirement a supplier needs to have in place internal policies, processes and procedures to ensure that an appropriate person within the organisation receives information about incidents associated with consumer goods or product related services quickly. However, the supplier is responsible for reporting regardless of the availability and actions of internal staff.

Suppliers are encouraged to submit appropriate and timely notifications, even if they are late, rather than delay notification further.

2 Circumstances for not reporting

The reporting requirement does not apply in any of the following circumstances:

- Where it is clear (that is certain) or very unlikely (that is highly unlikely) that the death, serious injury or illness, was not caused by the use or foreseeable misuse of the consumer goods.
- Where the supplier or another person is already required to report the death, serious injury or illness under a Commonwealth, State or Territory law or industry code specified in the Competition and Consumer Regulations 2010.
- Where a product was evidently faulty but no death or serious injury or illness occurred.

Suppliers should be very cautious about choosing not to report incidents. If there is doubt about whether to report an incident, it is appropriate to report it.

Some kinds of consumer goods are exempt from mandatory reporting on the basis that equivalent reporting schemes already exist. These exemptions are specified under Regulation 92 of the Competition and Consumer Regulations 2010 (see Appendix).

Specific requirements relevant to particular kinds of goods and circumstances are explained in the following sections.

2.1 Pesticides and veterinary medicines

Sponsors of pesticides and veterinary medicines are required to report to the Australian Pesticides and Veterinary Medicines Authority (APVMA). Pesticides and veterinary medicines are therefore exempted from mandatory reporting to the ACCC under Regulation 92.

2.2 Biological agents

Entities registered under the *National Health Security Act 2007* are required to report events in which persons are affected by a security-sensitive biological agent. That situation is exempted from mandatory reporting to the ACCC under Regulation 92.

2.3 Therapeutic goods

Sponsors of therapeutic goods, including medicines and medical devices, are required to report adverse events to the Therapeutic Goods Administration (TGA). Therapeutic goods are therefore exempted from mandatory reporting to the ACCC under Regulation 92.

2.4 Reports to a coroner

If a supplier has evidence that a death was reported to a coroner then they are exempted from mandatory reporting to the ACCC under Regulation 92.

2.5 Motor vehicles

State and Territory road traffic and transport legislation requires motor vehicle accidents on public roads to be reported to the police or other authorities. Motor vehicle accidents on public roads are therefore exempted under Regulation 92 from mandatory reporting to the ACCC.

Other kinds of motor vehicle related deaths, serious injury or illness (e.g. driveway runovers or off-road accidents) are not exempted by the Regulations and the normal mandatory reporting criteria apply.

2.6 Food

State and Territory legislation relating to health, food and notifiable diseases requires food-borne infectious diseases to be reported to health authorities. Food-borne infectious diseases are therefore exempted under Regulation 92 from mandatory reporting to the ACCC.

Other food-related deaths, serious injury or illness (e.g. anaphylactic reactions and choking on food-packaging) are not exempted by the Regulations and the normal reporting criteria apply.

Alcoholic beverages and liquor are not food and are not exempted from mandatory reporting. Only incidents where the liquor is believed to have directly caused death or serious injury or illness, such as severe alcohol poisoning, will be reportable. Incidents where alcohol is believed to have contributed by influencing a person's behaviour do not need to be reported.

2.7 Electrical and gas appliances

Safety incidents involving electrical or gas appliances that are consumer goods are not exempted by the Regulations and the normal mandatory reporting criteria apply.

In some instances, suppliers of electrical or gas appliances may need to report an electricity or gas safety incident to the State or Territory electrical or gas safety regulator. However, such a report does not satisfy obligations to report to the ACCC. If the incident involved a death or serious injury or illness that was caused, or may have been caused, by an electrical or gas appliance, a mandatory report will also need to be submitted to the ACCC.

3 Notice requirements

3.1 What information is to be provided in the written notice?

The mandatory reporting laws prescribe certain information that is to be included in the written notice.

Where all of the triggers for the reporting requirements exist and the circumstances for non-reporting do not apply, the supplier is required to report the following information by way of written notice to the Commonwealth Minister:

- 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 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 in question occurred;
 - the nature of any serious injury or illness suffered;
 - any action the supplier has taken or intends to take in relation to the consumer goods and/or the services.

There is no requirement for a supplier to substantiate information prior to making a report.

The ACCC asks suppliers to provide basic details of the injured person for statistical purposes and to cross-check with other data sources. The online form reminds reporters to only provide personal details of the injured person after appropriate consent is obtained.

Suppliers should provide information about the incident to the extent known at the time that the report is due. The two day reporting timeframe means that the supplier will often not have all of the details for a thorough investigation or determination about the incident before submitting the report. The legislation requires that the notice must “include information...to the extent that it is known by the supplier at the time the notice is given”.

Suppliers are asked to provide updated information as it becomes available. The information will be recorded with the initial report and the combined information will be considered in any decisions about categorising or responding to the report.

3.2 How must a supplier report an incident?

Suppliers must provide the Commonwealth Minister with written notification of the incident. The relevant Commonwealth Minister is the Parliamentary Secretary to the Treasurer responsible for competition and consumer policy.

A supplier will fulfil the requirement to report to the Commonwealth Minister by completing and submitting a mandatory reporting report via the ACCC's online form, available at www.productsafety.gov.au/mandatoryreporting. If a business cannot submit using the online form it should contact the ACCC on 1300 302 502.

The online form allows the supplier to provide an email address so that the ACCC can send an automatic email acknowledging receipt of the report with a report number for future reference.

3.3 ACCC response to the notice

The key purpose of mandatory reporting is to improve the responsiveness of the regulatory regime and enhance the ability of regulators to identify trends and assess risks on a case-by-case basis.

The ACCC will review each mandatory report as soon as practicable after receipt. Reports of deaths will be processed with priority over reports of injury or illness.

In the first instance the ACCC will want to investigate the cause of the incident and following this, determine whether there is a need for further action to be taken. The ACCC will seek to establish whether the incident was directly caused by the product and whether the problem arose because of a design or manufacturing fault.

The ACCC will ask the reporter to provide its view of why the incident occurred. An effective investigation and root-cause analysis can take time, and some information may not be available at the time a report is submitted. However, the ACCC expects suppliers to undertake this process as quickly as possible. Wherever necessary, the ACCC will maintain contact with the reporter to obtain the results of the reporter's investigations and analyses. The ACCC will take the reporter's investigations and analyses into account, as well as any other relevant information, before deciding what action may be required.

Depending on the specific nature of the incident, and the nature of the risk to other consumers, a mandatory report may result in:

- no immediate further action
- a detailed hazard assessment project
- the voluntary or compulsory recall of the product
- non regulatory action, such as education or a warning
- regulatory action establishing a ban or mandatory standard
- enforcement action if regulations have been breached.

The reporter will be advised of these immediate actions.

The ACCC will maintain a database of aggregated information from mandatory reports. This database will be used to assess potential product related hazards and determine whether a trend has developed which suggests that a product safety standard or ban is necessary. Reporters may not necessarily become aware that their mandatory report contributed to these longer term actions.

4 Supplier liability implications

Reporting information under the reporting requirement is not to be taken for any purpose as an admission by the supplier of any liability in relation to the consumer goods, product related services or to a death, serious injury or illness.

A mandatory report may not be taken as an admission that the consumer good involved in the incident is non-compliant with a mandatory standard or ban.

The benefit of a mandatory reporting regime is, in part, the availability of timely information to regulators. Mandatory reporting data will allow regulators to both observe trends in injuries related to consumer goods and take appropriate action in relation to trends or serious incidents.

5 Confidentiality of notices

Mandatory reports will not be placed on a public database. Section 132A of the ACL requires that notices be treated confidentially unless the reporter consents to disclosure.

Suppliers will therefore be unable to obtain details of mandatory reports submitted by others in relation to products that they supply, unless those reporters consent for this to occur. For the same reason, mandatory reports should be protected from release under the *Freedom of Information Act*.

The ACL allows the Commonwealth Minister to share mandatory report information with another responsible Minister and the ACCC can share mandatory reports with the State and Territory associate regulators. The shared information is still protected by the confidentiality requirements under section 132A of the ACL.

However, the ACL outlines the following exceptional circumstances under which information in mandatory reports may be disclosed:

- Disclosure by the Commonwealth Minister in the public interest
- Disclosure as required or authorised by or under law
- Disclosure as reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

The ACCC would limit any information disclosed about a mandatory report to that which was necessary.

6 Penalties

A supplier who fails to notify the Commonwealth Minister as required 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, so a court is not required to consider whether the person intended not to notify the Minister before finding them guilty.

The ACCC approaches penalties according to its Compliance and Enforcement Policy. When considering whether to seek a penalty in relation to an alleged failure to submit a mandatory report, the ACCC will therefore consider the following:

- Is there a pattern of repeated non-reporting?
- How long was the report delayed?
- Did the delay or non-reporting contribute to consumer detriment?
- Were consumers unduly exposed to unsafe products?

7 Case study

The following scenario is an example of how a mandatory reporting process may flow.

Process	Scenario
<i>A retailer is prepared to comply with the mandatory reporting requirements</i>	<p>A supplier has in place appropriate procedures for receiving customer feedback. The procedures cover the following:</p> <ul style="list-style-type: none">▪ A requirement that all complaints are recorded. The record of the complaint should include who made the complaint and their contact details, a description of the product, details of the nature of the complaint including whether the consumer goods have been associated with a death or serious injury or illness.▪ A mechanism exists whereby complaints that may trigger the mandatory reporting requirement are escalated to the appropriate area within the business for further investigation.▪ A staff member is assigned the task of reviewing complaints to determine what action is required. The staff member must be able to assess whether the complaint relates to a potential safety related hazard including whether the product has been associated with a death or serious injury or illness.
<i>A consumer raises a concern</i>	<p>A customer returns a hot water bottle to a retailer and asks for a refund indicating that the goods caused an injury. The</p>

customer says he received a third degree burn when the hot water bottle burst and as a result he required skin grafts.

The ACCC does not consider it necessary for the customer to provide proof of purchase at the time of making a complaint for the mandatory reporting requirement to be triggered. It is expected that ordinarily the supplier would have records that would confirm that the consumer good in question was the kind it supplied.

The customer need not be seeking a refund for the reporting requirement to be triggered. The consumer might merely be telling the retailer of his or her experience.

A staff member records the customer feedback

A sales assistant records the details of the customer's incident asking for whatever information is available. This might include:

- the name and contact details of the customer
- any available information about the product
- when (or approximately when) he/she purchased the product
- how and when the incident occurred
- the nature of the injury or illness
- why the consumer thinks the product contributed to the incident

The staff member sends the feedback to their manager.

The sales assistant ensures that the customer feedback form is drawn to the attention of the customer service manager who is responsible for making mandatory notifications.

The manager considers whether a mandatory reporting obligation might have been triggered.

The manager determines that a hot water bottle is a consumer good, as she considers that it is a product of a kind likely to be for personal use.

The manager suspects that the person was responsible for the injury rather than the hot water bottle having a fault – she understands the consumer put pressure on the bottle by putting it under their body. However the manager realises that even if she thinks the consumer's actions contributed to the injury, she needs to report it.

The hot water bottle is a consumer good and someone thinks it caused a serious injury so the reporting requirement is likely triggered.

The manager considers whether the injury was serious

The manager knows she only needs to report serious injuries. The customer has indicated he was hospitalised and the manager knows that this would certainly be considered serious. Injuries or illnesses that require medical treatment by a doctor or nurse are considered serious and therefore are reportable.

The manager explains to senior managers why the company needs to report the incident.

The manager realises that her organisation is required to report the hot water bottle injury. She explains to senior managers that the injury is serious and is related to a consumer good, and that the customer thinks the injury was caused by the hot water bottle.

One senior manager is concerned that the company's reputation will be damaged and would rather the matter be further investigated. The manager explains that the report is confidential and does not create liability issues for the company. The company is not required to substantiate the report. The manager explains that the company is required to report within two days so it would be unwise for the company not to report the incident immediately.

Another senior manager is sure the company is exempt as a colleague recently told him of an incident but that organisation was not required to make a report to the ACCC.

The manager checks the *Competition and Consumer Act 2010* and confirms that there is no exemption from mandatory reporting. Therefore the incident must be reported to the ACCC.

The manager makes the notification within two days.

The manager rings the complainant and obtains their consent to include their contact details in the mandatory report.

The manager fills in the online form on the Product Safety Australia website (www.productsafety.gov.au) and reports the injury. She makes sure she does this within the two day time limit.

The manager receives an automatic acknowledgement of receipt from the ACCC via email.

The manager receives other injury reports.

The manager's attention is drawn to a further three injury reports relating to hot water bottles over the coming days. The first of these is from the Dubbo branch. On reading the report the manager realises it is the same customer who has been telling another sales assistant about his injury. The manager realises she does not have to report the incident again.

The second injury report has come from the Canberra branch. The manager notes that the report is about the same brand of hot water bottle, but is actually a different incident. The manager submits a new notification for this injury. The manager notices the third injury when she reads a memo from the Company's New Zealand office. The manager realises that the same product is involved in the New Zealand incident and that it too will need to be reported.

The ACCC receives the mandatory reports.

On receiving the notification an ACCC officer contacts the reporter to verify details. The ACCC liaises with the reporter to determine their view of the cause of the incident.

The ACCC also contacts the injured customers to collect further injury information. (The supplier obtained the consent of the injured customers prior to including these details in the reports to the ACCC).

Hot water bottles are the subject of a mandatory safety standard, and ACCC officers determine that the mandatory standard was not breached.

The ACCC determines the cause of the incident including whether there was a design or manufacturing fault in the product.

The ACCC advises the reporter of the outcome of its assessment.

The ACCC designs a simple education campaign and media activity to remind the public about the safe use of hot water bottles.

The report will be considered when the ACCC next reviews the effectiveness of the mandatory standard.

8 Appendix – Regulation 92, Competition and Consumer Regulations 2010

The following is a copy of Regulation 92 from the Competition and Consumer Regulations 2010, correct as of 10 December 2010. Regulation 92 specifies the existing reporting schemes that are exempted from the mandatory reporting requirements.

92 Laws specified for supplier reports about consumer goods associated with death, serious injury or illness of any person

For paragraphs 131 (2) (c) and 132 (2) (c) of the Australian Consumer Law, a law of the Commonwealth, a State or a Territory mentioned in an item of the following table is specified.

Item Law of the Commonwealth, a State or a Territory

- 1 *Agricultural and Veterinary Chemicals Act 1994* (Cth)
 - 2 *National Health Security Act 2007* (Cth)
 - 3 *Therapeutic Goods Act 1989* (Cth)
 - 4 *Coroners Act 2009* (NSW)
 - 5 *Public Health Act 1991* (NSW)
 - 6 *Road Transport (Safety and Traffic Management) Act 1999* (NSW)
 - 7 **Coroners Act 2008** (Vic)
 - 8 **Public Health and Wellbeing Act 2008** (Vic)
 - 9 **Road Safety Act 1986** (Vic)
 - 10 *Coroners Act 2003* (Qld)
 - 11 *Motor Accident Insurance Act 1994* (Qld)
 - 12 *Public Health Act 2005* (Qld)
 - 13 *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld)
 - 14 *Coroners Act 1996* (WA)
 - 15 *Food Regulations 2009* (WA)
 - 16 *Health Act 1911* (WA)
 - 17 *Road Traffic Act 1974* (WA)
 - 18 *Coroners Act 2003* (SA)
 - 19 *Public and Environmental Health Act 1987* (SA)
 - 20 *Road Traffic Act 1961* (SA)
 - 21 *Coroners Act 1995* (Tas)
 - 22 *Public Health Act 1997* (Tas)
 - 23 *Traffic Act 1925* (Tas)
 - 24 *Coroners Act 1997* (ACT)
 - 25 *Public Health Act 1997* (ACT)
 - 26 *Road Transport (Safety and Traffic Management) Act 1999* (ACT)
 - 27 *Coroners Act* (NT)
 - 28 *Notifiable Diseases Act* (NT)
 - 29 *Traffic Act* (NT)
 - 30 Regulations made under an Act mentioned in items 1 to 12, 14 and 16 to 29
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