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Commercial Law e-alert

New notification requirements for suppliers of consumer goods

The *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010* was passed by both houses of Parliament on 24 June 2010 and is currently awaiting royal assent. The bill imposes onerous notification requirements on suppliers of goods which are associated with the death, serious injury or illness of any person. The relevant provisions are expected to commence on 1 January 2011.

The bill provides that if a supplier of consumer goods in trade or commerce becomes aware that a death, serious injury or illness has been caused, or may have been caused, to a person by the use or foreseeable misuse of the goods, the supplier must give written notice to the Minister within 2 days of becoming so aware ("the notification requirement"). Further, the supplier must provide such notice if the supplier becomes aware that another person considers that a death, serious injury or illness has been caused, or may have been caused, by the goods.

There are a few exceptions to the notification requirement, such as if it is clear that the death, serious injury or illness was not caused by the use of the goods or it is very unlikely that it was so caused. Further, the supplier will not have to provide notification if the supplier, or another person, is required to notify the death, serious injury or illness in accordance with another law or an industry code of practice.

The written notice to the Minister must meet all of the following requirements:

1. identify the consumer goods;
2. include information about when, and in what quantities, the consumer goods were manufactured in Australia, supplied in Australia, imported into Australia or exported from Australia;
3. include information about the circumstances in which the death, serious injury or illness occurred and the nature of any serious injury or illness suffered by any person; and
4. include information about any action the supplier has taken, or is intending to take, in relation to the consumer goods.

The bill provides that:

- a. The giving of a notice to the Minister is not to be taken to be an admission by the supplier of any liability in relation to the consumer goods or the death, serious injury or illness of any person.
- b. Notices are to be kept confidential. However there are a few exceptions, such as disclosures from the Minister to another responsible Minister, regulator or associate regulator and disclosures by members of staff to other members of staff in performance of their duties
- c. The notice can be disclosed if:
 1. the Minister considers its disclosure to be in the public interest;
 2. the disclosure is required or authorised by law;
 3. the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

The notification requirement and the associated provisions also apply to suppliers of “product related services”. The bill defines “product related service” to be a service relating to the supply of consumer goods of a particular kind. It includes the installation, maintenance, repair, cleaning, assembly or delivery of consumer goods.

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