



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Product safety mandatory reporting guideline

When suppliers are required to notify a death or  
serious injury or illness

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Australian Competition and Consumer Commission  
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# Contents

<b>1.</b>	<b>Mandatory reporting guideline</b>	<b>1</b>
1.1	About this guideline	1
1.2	How to use this guideline	2
1.3	Glossary	3
<b>2.</b>	<b>Mandatory reporting law</b>	<b>5</b>
2.1	The legal requirement to submit a mandatory report	5
2.2	Consumers can report an unsafe product	6
2.3	Voluntary reporting - the best practice approach	6
<b>3.</b>	<b>Who must submit a mandatory report</b>	<b>8</b>
3.1	Suppliers' obligations	8
3.2	Defining 'supplier'	8
3.3	Defining 'consumer good'	8
3.4	Defining 'product related service'	9
<b>4.</b>	<b>Incidents requiring a mandatory report</b>	<b>10</b>
4.1	Mandatory reporting criteria	10
4.2	Becoming aware of a reportable incident	10
4.3	Overseas incidents and suppliers	11
4.4	Defining 'serious injury or illness'	12
4.5	Meaning of 'caused or may have been caused'	17
4.6	Defining 'use or foreseeable misuse'	17
4.7	Near misses	18
<b>5.</b>	<b>Incidents that do not require a mandatory report</b>	<b>19</b>
5.1	When a mandatory report is NOT required	19
5.2	Exceptions to mandatory reporting: Regulation 92	19
<b>6.</b>	<b>Submitting a mandatory report</b>	<b>21</b>
6.1	Timeframe - reports must be made within 2 days	21
6.2	Information to be included in the mandatory report	22
6.3	Making a report with incomplete information	23
6.4	How to submit a mandatory report	23
6.5	An agent can submit a mandatory report on behalf of multiple suppliers	24
6.6	How to submit a voluntary report	24
<b>7.</b>	<b>After a mandatory report is submitted</b>	<b>25</b>
7.1	What the ACCC does with mandatory reports	25
7.2	Confidentiality	25
7.3	Mandatory reports are not an admission of liability	26
7.4	Penalties for not reporting	26
7.5	Product recalls	27
<b>8.</b>	<b>Compliance culture</b>	<b>28</b>
8.1	Internal procedures	28
8.2	Notice about mandatory reporting obligations	28
8.3	Sample questions to obtain information about an incident	29
8.4	Compliance programs	29

8.5	Compliance program templates	29
	<b>Annexure 1 - Tools for evaluating whether an incident requires a mandatory report</b>	<b>30</b>
	<b>Annexure 2 - Exceptions from mandatory reporting: Regulation 92, Competition and Consumer Regulations 2010</b>	<b>33</b>

# 1. Mandatory reporting guideline

## 1.1 About this guideline

The Australian Competition and Consumer Commission (ACCC) has developed this guideline to help suppliers understand their product safety mandatory reporting obligations. The guideline also provides information on recommended best practice for voluntary reporting of incidents that do not meet the mandatory reporting requirements (such as near misses) which can help provide the ACCC with an early indication of product safety issues.

A short overview is available on the Product Safety Australia website, [www.productsafety.gov.au/mandatoryreporting](http://www.productsafety.gov.au/mandatoryreporting).

### **Best practice**

Throughout this guideline, information on best practice voluntary reporting will be found in a textbox like this.

The guideline is not a substitute for the Australian Consumer Law (ACL) itself and is not legal advice.

This guideline was last updated in December 2021 and may be updated from time to time.

## 1.2 How to use this guideline

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<b>Mandatory reporting law</b>	Chapter 2 summarises the legal framework for mandatory reporting and outlines the best practice approach to reporting incidents voluntarily.
<b>Who must submit a mandatory report</b>	Chapter 3 explains whether you are required to submit a mandatory report. It explains who a supplier is and defines 'consumer goods' and 'product related services'.
<b>Reportable incidents</b>	Chapter 4 helps you assess whether an incident associated with a consumer product you supply must be reported. This chapter also provides information about: <ul style="list-style-type: none"><li>▪ serious injury or illness</li><li>▪ pre-existing medical conditions</li><li>▪ the types of treatments to make an incident reportable</li><li>▪ assessing whether a death or serious injury or illness was caused by the consumer products you supply, including through foreseeable misuse.</li></ul>
<b>When a mandatory report is NOT required</b>	Chapter 5 describes when an incident may be reportable to another authority and is therefore exempt from mandatory reporting to the Commonwealth Minister.
<b>Submitting a mandatory report</b>	Chapter 6 helps you to determine when to submit a mandatory report, what to include in the report, and how to submit the report. It also explains how to submit a report voluntarily, and what to do if you do not have all the relevant information at the time of submitting a report.
<b>After a mandatory report is submitted (or not)</b>	Chapter 7 explains what happens after you submit a mandatory report and what happens if you don't submit a mandatory report. It also explains that you could be found guilty of a criminal offence, which is punishable by a fine, if you fail to submit a mandatory report within 2 days of becoming aware of a reportable incident.
<b>Compliance culture</b>	Chapter 8 explains how a business can develop its compliance culture and includes: <ul style="list-style-type: none"><li>▪ a template notice that can be tailored to inform your staff of reporting obligations</li><li>▪ a list of sample questions you can use when obtaining information about an incident</li><li>▪ information regarding compliance programs.</li></ul>
<b>Tools for evaluating your mandatory reporting obligations</b>	Annexure 1 provides an evaluation flowchart and checklist to assist you to assess whether an incident is reportable.  Annexure 2 provides a list of laws that apply to exempt certain types of reports from the mandatory reporting requirements.

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## 1.3 Glossary

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
Acute injury or illness	A physical injury or illness that is brief, severe and arises through a sudden onset. An acute injury or illness is not chronic and does not gradually develop over time
Best practice approach	Submitting a voluntary report to the ACCC for an incident that does not meet the mandatory reporting threshold, such as a near miss, aggravation of a pre-existing injury, or a delayed onset illness. This is not legally required but is strongly encouraged by the ACCC
Consumer good	A good intended to be used, or of a kind likely to be used, for personal, domestic, or household use or consumption. Also referred to as 'goods' in this guideline
Consumer product	Consumer product refers to 'consumer goods' and 'product related services' collectively, in this guideline
Foreseeable misuse	Using consumer goods or product related services in a way that is not intended, or in a wrong or improper way, but which is reasonably foreseeable. Something is considered to be reasonably foreseeable if it is predictable, that is it is not far-fetched or fanciful in the circumstances
Incident	A death or serious injury or illness caused, or which may have been caused, by the use or foreseeable misuse of a consumer good or product related service
Lead agency	A government authority with regulatory responsibility and knowledge of specific products (such as road vehicles) that takes a lead role in their safety, including monitoring relevant injury reports from suppliers regarding products within their regulatory responsibility. A lead regulator or agency is also known as a specialist agency
Mandatory report	A notice from a supplier, which is required by law, about a death or serious injury or illness, caused, or which may have been caused, by the use or foreseeable misuse of a consumer product, made to the Commonwealth Minister. In practice the written notice can be made by submitting it to the ACCC
Medical or surgical treatment	Medical treatment that is required by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place)

Medical practitioner or a nurse	<p>A medical practitioner or nurse who is registered to practice and includes all recognised specialists and sub-specialities of those professions. For example, a:</p> <ul style="list-style-type: none"> <li>■ general practitioner</li> <li>■ hospital resident or hospital registrar</li> <li>■ surgeon</li> <li>■ enrolled or registered nurse, or nurse practitioner</li> </ul> <p>Examples of a health practitioner who is <b>not</b> a medical practitioner or a nurse include a:</p> <ul style="list-style-type: none"> <li>■ dentist</li> <li>■ ambulance officer or paramedic</li> <li>■ physiotherapist</li> <li>■ chiropractor</li> </ul>
Near miss	An incident involving a consumer good or product related service that did not cause death or serious injury or illness but had the potential to do so
Pre-existing medical condition	An ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or the recurrence or aggravation of such an ailment, disorder, defect or morbid condition. That is, a condition that existed prior to an incident
Product related service	A service for or relating to a consumer good. A product related service includes services such as the installation, maintenance, repair or cleaning, assembly, delivery, and supply of consumer goods. Also referred to as a 'service' in this guideline
Serious injury or illness	An acute physical injury or illness that requires medical or surgical treatment required by, or under the supervision of, a medical practitioner or a nurse (whether or not in a hospital, clinic or similar place)
Supplier	Any participant in the supply chain of a consumer good or product related service
Voluntary report	A confidential and voluntary report of a safety issue or potential safety issue relating to consumer products that a supplier may submit to the ACCC



## 2. Mandatory reporting law

### 2.1 The legal requirement to submit a mandatory report

Mandatory reports are required by section 131 of the ACL (in relation to consumer goods) and section 132 (in relation to product related services). Mandatory reporting requirements commenced on 1 January 2011.

#### **Sections 131 and 132 – Suppliers to report consumer goods or product related services associated with death or serious injury or illness**

If a person (the supplier), in trade or commerce, supplies consumer goods or product related services and becomes aware of a death or serious injury or illness of any person and:

- 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
- 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 consumer goods

the supplier must, within 2 days of becoming aware, give the Commonwealth Minister a written notice which includes certain information.

You will be taken to have reported an incident to the Commonwealth Minister by submitting a mandatory report using the ACCC's Product Safety Australia website, [www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0). The ACCC administers the Product Safety Australia website on behalf of the Commonwealth Minister.

The reporting requirement also applies to incidents that a supplier becomes aware of that have occurred outside Australia.

#### **Requirement to submit a mandatory report**

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##### **Required to report**

- You have supplied consumer products in trade or commerce, and
- You become aware of a death or serious injury or illness
  - you consider 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 product related services) in question, or
  - you become aware that someone else (including the affected 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 (or product related services) in question.

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##### **NOT required to report**

- The injury or illness is minor in nature (for example, not requiring medical or surgical treatment)
  - It is clear the incident was not caused by the use or foreseeable misuse of a consumer product
  - You or another person are exempt because you are required to notify another authority under a law or industry code specified in the Competition and Consumer Regulations 2010, Regulation 92 (refer to Annexure 2).
- 

A mandatory report cannot be taken as an admission of any liability in relation to the death or serious injury or illness of any person (sections 131(6) and 132(6) of the ACL).

Mandatory reports are confidential. The reports, and any information contained within them, cannot be disclosed to any other person except with the consent of the person who has given the notice or in very limited circumstances (section 132A of the ACL). However, the ACCC can publish aggregate figures and trends on mandatory reporting to assist in raising product safety awareness.

As a supplier of consumer products, you should familiarise yourself with the mandatory reporting requirements to ensure that all internal policies and procedures of your business enable you to receive, record and assess information so that you can meet the 2-day reporting deadline for reportable incidents.

## 2.2 Consumers can report an unsafe product

The ACCC encourages consumers to contact the supplier in the first instance to report a death or serious injury or illness caused by a consumer product. Consumers can also choose to report a product to the ACCC that they consider to be unsafe using the Product Safety Australia website at [www.productsafety.gov.au/reportanunsafeproduct](http://www.productsafety.gov.au/reportanunsafeproduct).

The ACCC reviews reports regarding unsafe consumer products that it receives. Where the report indicates the incident may involve death or serious injury or illness and the supplier has been made aware of the incident, the ACCC will contact the supplier if a mandatory report has not yet been received. The supplier may also be contacted if more information is required to assist with the risk assessment.

Confidentiality requirements prevent the ACCC from disclosing to consumers whether a mandatory report has been made by the supplier. Where further information is required from the consumer, the ACCC requests this information and advises the consumer that the matter will be assessed but does not disclose information provided by the supplier.

## 2.3 Voluntary reporting - the best practice approach

In some instances, reporting an incident is required by the mandatory reporting provisions of the ACL. Chapter 4 of this guideline explains the types of incidents that require mandatory reporting. **If you are in any doubt about whether a mandatory report is required, you are encouraged to submit a mandatory report.**

In other instances, while not legally required, the ACCC encourages you to voluntarily report when you become aware of a hazard associated with a consumer product you supply. In this guideline, this is referred to as the best practice approach to reporting.

The best practice approach to reporting reduces the risk of committing a criminal offence or attracting a civil penalty and fines. It also provides the ACCC with early insight into potential risks of a consumer good or product related service.

You are encouraged to submit a voluntary report if you have assessed that a mandatory report is not legally required, but it is possible that a similar incident with different circumstances could cause a death or serious injury or illness in the future.

Below is a non-exhaustive list of situations that do not require a mandatory report but where the ACCC strongly encourages you to voluntarily report.

- The consumer product did not cause a death or serious injury or illness in this instance, but had the potential to do so with a slight change in circumstances (that is, a near miss)
- The injury or illness is serious but developed slowly over time (not acute)
- A person's pre-existing ailment, disorder, defect or morbid condition contributed to the death or serious injury or illness
- The serious injury or illness was treated by a health practitioner who is not a medical practitioner or a nurse (for example, a dentist, physiotherapist, chiropractor)

- The incident was caused by a person misusing the consumer good, but the misuse was unforeseeable.

Voluntary reports can be submitted confidentially using the Product Safety Australia website [www.productsafety.gov.au/contact-us/for-retailers-suppliers](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers).

The ACCC will assess your voluntary report and only contact you if additional information or steps are required. However, you should continue to investigate any potential safety hazards and act where appropriate.

Adopting the best practice approach of voluntary reporting will help to ensure you have an effective compliance culture within your business.

Chapter 8 of this guideline provides you with more information on how to achieve an effective mandatory reporting compliance culture for your business.

## 3. Who must submit a mandatory report

### 3.1 Suppliers' obligations

Suppliers have mandatory reporting obligations when they become aware that the use, or foreseeable misuse of a consumer product they have supplied caused, or may have caused, a death or serious injury or illness.

For the purposes of the ACL and mandatory reporting, all participants in the supply chain are required to comply with the reporting requirement. This means that the ACCC may receive numerous reports from various suppliers of a consumer product associated with a reportable incident.

Suppliers can satisfy the mandatory reporting requirements by acting as an agent or engaging an agent to submit a mandatory report on behalf of some or all the suppliers in a supply chain associated with a relevant consumer product.

Refer to Chapter 6.5 of the guideline for more information about how to authorise an agent to submit a mandatory report on behalf of you and other suppliers in your supply chain.

### 3.2 Defining 'supplier'

#### Definition of supply (section 2(1) of the ACL)

Supply, when used as a verb, includes:

- in relation to goods—supply (including resupply) by way of sale, exchange, lease, hire or hire purchase, and
- in relation to services—provide, grant or confer, and
- when used as a noun, has a corresponding meaning, and supplied and supplier have corresponding meanings.

In relation to goods, 'supply' is defined to include re-supply, sale, exchange, lease, hire and hire-purchase. In relation to services, 'supply' is defined to include providing, granting or conferring.

You can be a supplier if you are:

- a retailer, dealer, contractor, distributor, installer, repairer, importer, manufacturer and/or exporter of a consumer product, or
- in the business of importing, manufacturing, selling, leasing, exchanging, hiring, repairing, installing, or making available for hire-purchase any consumer good.

### 3.3 Defining 'consumer good'

A consumer good is a product intended to be used, or of a kind likely to be used, for personal, domestic, or household use or consumption (section 2(1) of the ACL). This can include any component part of, or accessory to, goods.

Consumer goods can be:

- made and supplied in Australia and exported, or
- made overseas and imported and supplied by a company in Australia, or
- made overseas and supplied directly to a consumer by an overseas company.

Therefore, if a foreign corporation, in trade or commerce, supplies consumer goods to Australia, they will be required to comply with the mandatory reporting requirements.

### **Example of a consumer good**

A standard domestic refrigerator sold to an individual is likely to be a 'consumer good' because the product is intended to be used, or is of a kind likely to be used, for personal, domestic, or household use or consumption. However, if an individual were to purchase a commercial-sized refrigerator designed to be used for commercial purposes, for example, to store food to sell at a café, that refrigerator would not be likely to be a 'consumer good'.

Products used for commercial purposes can be consumer goods when those products are used for a mixed purpose or become used for personal, domestic, or household use or consumption. For example, a commercial sized fridge used in a household could fall into the category of a consumer good.

If an Australian supplier of a consumer good outside Australia becomes aware of a death or serious injury or illness that was or may have been caused by the consumer good, the incident must be reported to the Commonwealth Minister. This report can be made using the ACCC Product Safety Australia website.

Mandatory reports would not normally be made for products that are in production and have not yet been released for supply to consumers (that is, goods that are still in development and not released for sale and distribution).

## **3.4 Defining 'product related service'**

A product related service includes services relating to consumer goods of a particular kind and to the installation, maintenance, repair or cleaning, assembly, delivery, and supply of consumer goods (section 2(1) of the ACL).

Where a supplier provides a service in relation to a consumer good (for example, installs, repairs, cleans, assembles, transports) and becomes aware that the good may have caused a death or serious injury or illness, the supplier of the product related service is required to submit a mandatory report. The report is required regardless of whether the product related service had any connection to the incident. The reporting requirement only applies to product related services and not more broadly to 'consumer services' (for example, hairdressing services or telecommunication services).

### **Example of a product related service**

A supplier installed vertical blinds at a customer's home. The customer contacted the installer and told them that the vertical blinds got tangled and trapped their child's hand, causing bruising and lacerations, which needed medical treatment.

This is a reportable incident in relation to a consumer good (the vertical blinds) and the installation of the consumer good (the product related service). The installer who provided the installation service in relation to the vertical blinds is required to report the serious injury associated with the vertical blinds, regardless of whether the installer considers that the incident is related to a problem with the vertical blinds or the installation service.

## 4. Incidents requiring a mandatory report

### 4.1 Mandatory reporting criteria

You must submit a mandatory report if all the following 3 criteria are met:

1. You have supplied consumer products in trade or commerce
2. You become aware of a death or serious injury or illness
3. You consider that a death or serious injury or illness was caused or may have been caused by the use (or foreseeable misuse) of the consumer goods or product related services in question

OR

You become aware that someone else (including the affected person) considers that a death or serious injury or illness was caused or may have been caused by the use (or foreseeable misuse) of the consumer goods or product related services in question.

Where **all 3** of the above reporting criteria are met, you are required to report that the consumer product has caused or may have caused a death or serious injury or illness.

You will fulfil the requirement to report to the Commonwealth Minister by submitting a mandatory report using the Product Safety Australia website, [www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0).

### 4.2 Becoming aware of a reportable incident

As a supplier, if you **become aware** of a death or serious injury or illness associated with a consumer product that you supply, you must submit a mandatory report within 2 days.

You are taken to have become aware of a reportable incident as soon as a person within your organisation becomes aware of it (not just a manager or the Chief Executive Officer). For example, when an employee of, or contractor to your business, receives relevant information about an incident involving your consumer product, you will be considered to have become aware of the incident at that time and are therefore required to report it within 2 days.

#### Example of when an organisation becomes aware of an incident

Company Zena engages Company Apex to run its customer call centre. The call centre is represented to the public as Company Zena's call centre. Company Apex staff handle contacts to the call centre in accordance with Company Zena's instructions.

A person contacts the call centre to advise that someone was seriously injured using Company Zena's product. Company Zena becomes aware of the incident at that moment, even though the service representative taking the call is employed by Company Apex. This is because Company Apex staff are acting as Company Zena's representatives with its authority when handling calls to the call centre.

It is therefore essential that mandatory reporting of consumer product related deaths or serious injuries or illnesses is incorporated into your organisation's complaint-handling procedures, systems, and policies.

You are not required to report each time you are notified of the **same** incident, even if the information comes from a different source each time. However, if you become aware that the same type of consumer product has been involved in another incident that fulfils the mandatory reporting criteria,

you must report the new incident to the Commonwealth Minister within the 2-day reporting timeframe. This is because the law requires **each** death or serious injury or illness to be reported.

Awareness of an incident does not need to be based on written notification. You are required to submit a mandatory report when an issue comes to light, regardless of how that information is conveyed to you.

You are not required to make yourself aware of anything that you would not become aware of in the ordinary course of your business. However, it is important that your business processes allow for a consumer to easily report an incident to you if one arises.

### **Examples of how a supplier can become aware of a reportable incident**

A supplier will become aware of a death or serious injury upon receiving information from a range of sources (section 131(4) of the ACL). For example, a supplier may become aware of an incident through:

- direct notification by a consumer, a complaint or information the consumer provides in writing or verbally
- hearing about it from media or social media (on the news or reading a report about it)
- 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 initiated by a different organisation
- notification by a re-supplier, repairer or insurer of the consumer goods
- receipt of reports from experts, test reports, or scientific or other relevant information
- consumer contact through a call centre operated by your business or a contractor.

## **4.3 Overseas incidents and suppliers**

An incident does not need to have occurred in Australia to require a mandatory report. Australian based suppliers must submit a mandatory report for reportable incidents they become aware of involving consumer goods they supply overseas, whether that incident occurred in Australia or overseas.

Overseas based suppliers who supply consumer goods in Australia must also submit a mandatory report for reportable incidents they become aware of involving consumer goods they supply in Australia, whether that incident occurred in Australia or overseas.

### **Example of an overseas incident requiring a mandatory report**

A supplier of wooden toys is based in the United Kingdom (UK). The supplier also sells the wooden toys online to other countries including Australia. The supplier is informed by one of its customers in the UK that one of the supplier's toys has caused a serious injury to a child. In this situation, the overseas based supplier must submit a mandatory report in Australia.

## 4.4 Defining ‘serious injury or illness’

An incident is reportable if the consumer product you supply caused, or may have caused, a death or **serious injury or illness**.

### Definition of serious injury or illness (section 2(1) of the ACL)

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 a nurse (whether or not in a hospital, clinic, or similar place), but does not include:

- a. an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development); or
- b. the recurrence, or aggravation, of such an ailment, disorder, defect or morbid condition.

### Ailment, disorder, defect or morbid condition

An ailment, disorder, defect or morbid condition can be defined as a departure, subjective or objective, from a state of physical or mental well-being as a result of either disease or injury.<sup>1</sup>

The test for a serious injury or illness requires three criteria to be met:

1. the physical injury or illness is acute,
2. the physical injury or illness requires **medical or surgical treatment**
3. treatment was required by, or under the supervision of, a **medical practitioner** or a **nurse** (whether or not in a hospital, clinic, or similar place).

If all three criteria are met, the incident meets the ‘serious injury or illness’ requirement for reporting.

However, if an acute injury or illness is caused by a consumer good but medical treatment is not required, by or under the supervision of, a medical practitioner or a nurse, the incident does not require a mandatory report.

### Best practice

Although not legally required, the ACCC strongly encourages suppliers to voluntarily report any incident involving a consumer good that resulted in an injury or illness where it does not meet the mandatory reporting threshold.

### 4.4.1 Acute injury or illness

For an injury or illness to be ‘serious’, the first criterion to be addressed is that the physical injury or illness must be **acute**.

An acute injury or illness is one that arises through a sudden onset and therefore is not one that gradually developed over time. ‘Acute’ is also taken to mean that the injury or illness is brief and severe and is not a chronic injury or illness.

Examples of injuries or illness that are acute include:

- An external physical injury, such as a burn, laceration, broken bone, choking or bone fracture, that requires treatment by a medical practitioner or a nurse.
- An internal injury, such as internal bleeding, that requires medical or surgical treatment.

<sup>1</sup> Organisation for Economic Co-Operation and Development <https://stats.oecd.org/glossary/detail.asp?ID=1281>



- An illness, such as poisoning that results in severe vomiting, diarrhoea, or cramping, and requires medical treatment from a medical practitioner or a nurse.

### Examples of injuries or illnesses that ARE acute

- A person uses a blender to blend fruit and ice. The blender's blade malfunctions and propels out of the blender and causes a laceration to the user's cheek. The laceration requires stitches applied by a medical practitioner or a nurse.
- A person purchases paint to be used on the walls of their home. Upon opening the tin of paint, the person suffers a sudden onset of breathing difficulties, which require medical treatment from a medical practitioner or a nurse.
- An experienced quad bike operator travels on uneven terrain that causes the vehicle to unexpectedly tilt to one side. The vehicle rolls over, the rider falls to the ground and the quad bike comes to rest on their chest. They sustain serious crush injuries, including multiple fractures and internal thoracic injuries, which require medical treatment from a medical practitioner or a nurse.

### Examples of injuries or illnesses that ARE NOT acute

- A person purchases a new computer keyboard that has special features to assist the user to type faster. Over the next few months, the person notices that their wrists are sore and strained from using the keyboard.
- A person purchases a novelty item containing a specific chemical. After several years, the person experiences regular nausea and difficulty breathing, which a medical practitioner diagnoses as associated with the chemical. While serious, this incident is unlikely to satisfy the definition of being an acute illness as the person's symptoms gradually developed over time.<sup>2</sup>
- A person purchases high voltage light bulbs and uses them in every room of their home. The person slowly develops irritated eyes and blurred vision believed to be caused by the light bulbs. Ailments that develop gradually rather than through a sudden onset are not acute and therefore do not require a mandatory report.

### Best practice

While a mandatory report is not required for injuries and illnesses that are **not** acute, an injury or illness can cause severe consumer harm if it develops slowly over time. The ACCC strongly encourages suppliers to voluntarily report non-acute injuries or illnesses, even if they have a delayed onset. This will help the ACCC to identify product safety risks posed to consumers.

## 4.4.2 Pre-existing medical conditions

You are **not** required to submit a mandatory report for an injury or illness that is the result of a pre-existing medical condition. A pre-existing medical condition that existed prior to the incident, includes:

- an ailment, disorder, defect or morbid condition (whether of sudden onset or gradual development), or
- the recurrence or aggravation of such an ailment, disorder, defect or morbid condition,

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<sup>2</sup> The use or importation of specific chemicals to be used in consumer goods can be subject to other laws and regulations. For example, a total ban on the manufacture, use, reuse, import, transport, storage or sale of all forms of asbestos within Australia came into effect on 31 December 2003 under Commonwealth, state and territory work health and safety legislation. This ban is complemented by import and export prohibitions under the *Customs (Prohibited Imports) Regulations 1956* and *Customs (Prohibited Exports) Regulations 1958*.

For example, an allergic reaction is likely to be an aggravation of a pre-existing physical ailment, disorder, defect or morbid condition (being the state of physical hypersensitivity resulting from the allergy) and therefore is unlikely to be considered a serious injury or illness.

If a person with a pre-existing allergy to a substance suffers an anaphylactic reaction after contact with a consumer good containing that substance, and the allergen was declared on the product packaging, a mandatory report is not required. However, if a person had a reaction, which was not related to a pre-existing allergy, the incident is reportable if the injury or illness was severe and required medical treatment.

### Examples of pre-existing medical conditions

- A person diagnosed with eczema has an eczema outbreak after applying a moisturising lotion. The condition was pre-existing (that is it existed prior to the incident) and the incident does not require a mandatory report.
- A consumer had a seizure while using a flashing and strobing toy. The seizure was attributed to undiagnosed epilepsy that was triggered by the toy's flashing lights. Although undiagnosed the condition existed prior to the incident and the incident does not require a mandatory report.

### Best practice

Whilst ailments, disorders, defects, or morbid conditions are not reportable under the mandatory reporting regime, it is considered best practice and in the interests of effective risk management, to voluntarily report such incidents. This helps ensure effective measures can be put in place to protect consumers who may also suffer from the condition.

## 4.4.3 Medical or surgical treatment

For an injury or illness to be 'serious' and reportable, the second criterion requires that the physical injury or illness requires **medical or surgical treatment** by, or under the supervision of, a medical practitioner or a nurse.

Any medical treatment, whether it is minor or invasive will trigger the requirement for a mandatory report. Treatment can include anything that ranges from an application of a bandage, dressing a wound, prescribing the use of medication (either through oral ingestion or other application such as cream or injection); through to more invasive treatment, including performing cardiopulmonary resuscitation (CPR), providing stitches or surgery.

The medical or surgical treatment can occur anywhere - it does not need to be provided in a hospital or a clinic, or in a similar place. What is important is that treatment is received by a medical practitioner or a nurse.

For example, a school nurse could give medical treatment in a school, a medical practitioner could give medical treatment on a home visit to a patient, or a medical practitioner or nurse could give medical treatment to their own neighbour or themselves in their home. A medical practitioner or nurse could also provide medical treatment via a virtual or telephone appointment if they prescribe medicine or provides instructions about what the patient should do or not do to resolve their injury or illness or minimise symptoms.

Medical treatment should be distinguished from diagnostic procedures. If a person suffers an acute physical injury or illness and is attended to by a medical practitioner or a nurse, the incident is only reportable if the medical practitioner or nurse provides a form of treatment. However, if no treatment is given after examination by a medical practitioner or nurse, the injury or illness will not require a mandatory report.

If the injury or illness is acute and would ordinarily require treatment by a medical practitioner or nurse, but this was not received due to extenuating circumstances, the supplier must submit a mandatory

report. This could occur where medical assistance is not sought because of a lack of access to a medical practitioner or nurse (such as in rural or remote places).

The mandatory reporting requirements do not provide suppliers with a right to request medical records from people who provide information about an alleged injury or illness associated with a consumer product. Suppliers should report the facts known to them.

### **Best practice**

A mandatory report is not required for incidents where an injured or ill person does not require medical treatment. However, it is strongly recommended that a supplier adopts the best practice approach of voluntarily reporting any incident that results in medical attention, regardless of whether medical treatment was provided so that the risk of the incident occurring again or a more serious incident occurring can be minimised.

### **Examples of injuries or illnesses that require medical or surgical treatment**

- While using a power saw, a person is injured when the power saw blades dislodge from the saw. The person receives deep lacerations to their shin and is admitted to hospital. While in hospital the person is seen to by a medical practitioner and a nurse who treat the injured person's shin by applying stitches. As medical treatment was required, the incident is reportable.
- A person takes their mobile phone into a store to be repaired. Immediately after being repaired, the mobile phone becomes very hot and burns the person's fingers. The injured person visits a medical practitioner who treats their burn with ice and a bandage. The mobile phone repair service provider (and the mobile phone supplier, if they become aware of the incident) must submit a mandatory report about this incident.
- A person uses a stapler to staple documents together. A metal staple shoots out of the stapler in the wrong direction and causes a painful laceration on the person's eyelid. A medical practitioner examines the person and applies eye drops, an eye patch and prescribes pain relief medication. As medical treatment was required, the incident is reportable.
- While using a multi-purpose cooker, a person receives serious burns to their arm because the lid could not be fastened correctly. The person burned is a nurse, so they treat their own burn by running the skin under cool water, taking over-the-counter pain medication, and applying antibiotic cream and bandages to the affected area. If this person was not a nurse, it is likely they would have sought medical attention. Although the person treated themselves, this incident is reportable as medical treatment was required by a nurse.

### **Example of an incident where medical treatment would normally be required, but was not received**

- In the incident above where a consumer was injured by a staple, if the incident occurred in a remote area without access to medical services, so the consumer could not seek medical treatment, the incident would be reportable if the stapler supplier becomes aware of the incident.

## Examples of injuries or illnesses that DO NOT require medical or surgical treatment

- A person hires a vacuum that can steam clean carpet. Escaping steam causes blisters on the hands of the user who then applies a soothing cream at home to treat the blisters. The incident does not require a mandatory report. However, if a medical practitioner or nurse administered the soothing cream, the incident would be reportable.
- A person has their trampoline repaired and, immediately afterwards, one of the trampoline springs snaps off during use. The person falls and hurts their leg, requiring a visit to the hospital. At the hospital, the person is seen by a medical practitioner who refers the person for an X-ray. The X-ray shows that there were no broken bones or fractures, and the person is discharged. This incident does not require a mandatory report because being X-rayed is not a form of treatment—it is a diagnostic tool to assess whether treatment is required.
- Upon opening a toy from its packaging, small pieces of the toy propel outwards and graze a person's eye, causing discomfort. The person is seen by a nurse who advises that the eye is clear of any foreign matter and that any discomfort will disappear over the following days. As the person examined did not receive any treatment, the incident would not require a mandatory report. If, however, the nurse applied eye drops, the incident would require a mandatory report because medical treatment was required.

### 4.4.4 Treatment by a medical practitioner or a nurse

For an injury or illness to be 'serious' and reportable, the third criterion requires that the injury or illness requires treatment **by, or under the supervision of, a medical practitioner or a nurse** (whether or not in a hospital, clinic or similar place).

A medical practitioner or a nurse must be enrolled or registered to practice and includes all recognised specialists and sub-specialties of those professions. The types of professionals that would satisfy the definition of 'medical practitioner or nurse' include (but are not limited to):

- general practitioner
- hospital resident or hospital registrar
- surgeon
- enrolled or registered nurse or nurse practitioner.

Injuries or illnesses requiring treatment from health professionals other than medical practitioners or nurses do not satisfy the definition of serious injury or illness. If the injured or ill person is treated by any of the non-exhaustive list of professions below, the incident is unlikely to require mandatory reporting:

- physiotherapist or chiropractor
- naturopath or nutritionist
- occupational therapist
- dentist
- pharmacist
- ambulance officer or paramedic.

### Example of treatment NOT by a medical practitioner or a nurse

A broken tooth that is treated by a dentist does not require a mandatory report. However, if the injury requires treatment by an oral surgeon a mandatory report would be required.

## Best practice

Whilst a mandatory report is not required for injuries or illnesses treated by someone other than a medical practitioner or a nurse, if the injury or illness is sufficiently serious that it requires treatment for a registered health practitioner, it is best practice to report it voluntarily so the risk of the incident occurring again or a more serious incident occurring can be minimised.

## 4.5 Meaning of ‘caused or may have been caused’

As a supplier, you must report an incident when you become aware of a death or serious injury or illness that was **caused, or may have been caused**, by the use or foreseeable misuse of a consumer good (including a consumer good to which a product related service relates).

You also must submit a mandatory report if you become aware that someone else 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 good in question.

The various circumstances whereby a good could have **caused** a reportable incident, includes (but is not limited to) situations where the good was:

- used either before or at the time of the accident, where the good was being used for its primary, normal, or intended purpose; or for an unintended purpose, where the misuse was foreseeable
- a possible cause (and not necessarily the sole cause) of an incident
- somehow related to, or involved with, an incident (irrespective of whether the good was being used or misused at the time of the incident).

You are **not** legally required to provide a mandatory report where:

- the use (or foreseeable misuse) of the good did not cause the incident and no one else thinks it did, or
- it is very unlikely that the use (or foreseeable misuse) of the good caused the incident and no one else thinks it did, or
- you or another person are required to notify the death or serious injury or illness to another authority under a law or industry code specified in the Competition and Consumer Regulations 2010, Regulation 92 (refer to **Annexure 2**).

In other words, the ACL does not require a mandatory report for incidents where it is very unlikely that the consumer product was related, involved, or a possible cause or contributor to the death or serious injury or illness.

However, you must submit a mandatory report if you think the consumer products you supply were not related to the incident but someone other than yourself (including, for example, the injured or ill customer) thinks that the incident was caused, or may have been caused, by the use or foreseeable misuse of the consumer good.

## 4.6 Defining ‘use or foreseeable misuse’

A supplier must make a mandatory report when they become aware of a death or serious injury or illness that was caused, or may have been caused by, the **use or foreseeable misuse** of a consumer good (including a consumer good to which a product related service relates).

In other words, you must report an incident if you consider that use or foreseeable misuse of a consumer good may have caused a death or serious injury or illness.

‘Use’ refers to using consumer goods for their primary, normal, or intended purpose. For example, a consumer purchases a chair and uses it for sitting on; that is, the chair is being used as intended. Any

(normal) use of the consumer good that results in death or serious injury or illness gives rise to the requirement to report.

**'Foreseeable misuse'** refers to using consumer goods in a way that is not intended, or using goods in a wrong or improper way, but in a way which was foreseeable. Something is considered to be reasonably foreseeable if it is predictable, that is not far-fetched or fanciful, in the circumstances. For example, if a consumer purchases a chair and stands on the seat to change a light bulb, this would be a foreseeable misuse, because while this is not the intended use it is not far-fetched or fanciful that a consumer will use a chair in this way.

So long as the misuse is foreseeable, you must submit a mandatory report if the misuse results in a death or serious injury or illness. This is regardless of how the good might have been used or misused, and regardless of whether there were any defects with the good or whether the misuse only contributed to the cause of the incident.

It may be difficult to determine whether a 'misuse' of a consumer good was foreseeable. When assessing whether a misuse was foreseeable, you should ask yourself whether it was reasonably foreseeable (that is, not far-fetched or fanciful) for a consumer to have used the good in the unintended way.

### **Best practice**

If a consumer good was misused and caused death or serious injury or illness but the misuse was not foreseeable, you are encouraged to submit a voluntary report. This will help the ACCC to determine if there is a pattern of unforeseeable misuse of the consumer good.

## **4.7 Near misses**

A 'near miss' is an incident involving a consumer product that did not cause a death or serious injury or illness but had the potential to do so with a slight change in circumstances.

A near miss may be referred to as a 'close call', a 'near accident', an 'injury-free event' or, where there is a moving object, a 'near collision'.

Near misses are not required to be reported under the ACL, however, suppliers are encouraged to report such incidents voluntarily and to other relevant authorities. Near misses that are voluntarily reported will not be classified as mandatory reports.

Voluntarily reporting near misses helps the ACCC gather information about product safety trends and hazards. Near misses may be a precursor to more serious incidents and can highlight emerging problems such as gaps in existing standards, product variability in manufacturing or changes in the way that consumers are using products.

### **Examples of a near miss that the ACCC encourages suppliers to voluntarily report**

- A hoverboard charger caused a house fire and fortunately, no one was injured. As there was no death or serious injury or illness, the supplier of the hoverboard is not required to submit a mandatory report. However, this was still a dangerous incident, with the potential for the same issue to cause an incident involving death or serious injury or illness in the future.
- A kitchen appliance with a fault caused a component to eject at high speed. The component was ejected at waist height to the adult operating the appliance, who was bruised but did not require medical or surgical treatment. If a child had been operating the kitchen appliance, the ejected component could have been at eye level and could have caused a serious injury such as blindness.

# 5. Incidents that do not require a mandatory report

## 5.1 When a mandatory report is NOT required

As a supplier, you are not legally required to submit a mandatory report if:

- the incident does not involve a consumer good or product related service
- the injury or illness does not meet the threshold of 'serious', that is:
  - the injury or illness is not acute
  - medical or surgical treatment was not required for the injury or illness
  - medical treatment was not required by, or under the supervision of, a medical practitioner or a nurse.
- it is clear (or very likely) that the consumer product was not associated with the death or serious injury or illness and no one else considers this to be the case. In other words, where it is very unlikely that the goods were related, involved, a cause or possible cause, or a contributor or possible contributor to the incident
- it is clear (or very likely) that the incident was not caused by the use or foreseeable misuse of the consumer goods, or it is very unlikely that it was, and no one else considers this to be the case
- an incident occurred with a consumer good that did not cause death or serious injury or illness but it had the potential to do so (it was a near miss)
- where you or another person are required to notify the death or serious injury or illness to another authority, under a law or industry code specified in the Competition and Consumer Regulations 2010, Regulation 92 (refer to **Annexure 2**).

## 5.2 Exceptions to mandatory reporting: Regulation 92

Suppliers do not need to submit a mandatory report in situations where the supplier or another person is required to notify the death or serious injury or illness to another authority, under a law or industry code specified in the Competition and Consumer Regulations 2010, Regulation 92 (refer to **Annexure 2**).

It is your responsibility to familiarise yourself with the relevant Commonwealth, state and territory legislation specified in Regulation 92 to be able to assess whether a consumer product related incident is exempted from mandatory reporting obligations and reportable under a different regime.

The legislation specified in Regulation 92 varies in each state and territory, as do the reporting thresholds in each legislation. In some instances, the supplier is required to conduct tests or wait for more than one consumer complaint to meet the threshold of reporting under state or territory legislation. In those instances, if there is any uncertainty about the requirement to report under the Commonwealth, state or territory legislation, you are encouraged to submit a mandatory report within the 2-day reporting timeframe.

Chapter 7.1 of this guideline explains what the ACCC does with mandatory reports it receives for goods that are regulated by, or are the responsibility of, another regulator.

### Agricultural and veterinary chemicals

Registrants of pesticides and veterinary medicines are required to report adverse experience incidents to the Australian Pesticides and Veterinary Medicines Authority. Pesticides and veterinary medicines are therefore exempt from mandatory reporting under the ACL.

## 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. These events are exempt from mandatory reporting under the ACL.

## Food-borne infectious diseases in some jurisdictions

Some state and territory legislation relating to health, food and notifiable diseases require food-borne infectious diseases to be reported to health authorities. If notification of a food-borne infectious disease is required under one of the laws listed in Regulation 92, the incident is exempt from mandatory reporting under the ACL. Other food-related deaths or serious injuries or illnesses (for example, choking on food-packaging) are not exempt and the normal criteria for mandatory reporting apply.

Mandatory reporting obligations also apply to alcoholic beverages and liquor. Incidents where alcohol is believed to have contributed to an incident by influencing a person's behavior do not need to be reported, whereas incidents where the liquor is believed to have caused death or serious injury or illness, such as severe alcohol poisoning, require a mandatory report.

## Reports to a coroner

Where a death has been reported to a coroner, this is exempt from mandatory reporting under the ACL.

## Road vehicles

State and territory road traffic and transport legislation requires road vehicle accidents on public roads to be reported to the police or other authorities. Road vehicle accidents on public roads are therefore exempt from mandatory reporting under the ACL.

Other kinds of vehicle related deaths or serious injuries or illnesses (for example, driveway run overs) are not exempt from mandatory reporting under the ACL. The normal mandatory reporting criteria under the ACL apply – unless the incident is a death reported to a coroner. This is because the reporting thresholds in state and territory road and traffic legislation require the incident to occur on a public road, and a driveway does not meet these criteria.

Incidents involving vehicles such as golf carts, quad bikes, motorised mobility devices, and miniature motorbikes that cause death or serious injury or illness are not exempt from the mandatory reporting requirements and must be reported. This is because these vehicles are not considered to be road vehicles, and the state and territory road traffic and transport legislation requires reporting of incidents on public roads involving road vehicles.



## 6. Submitting a mandatory report

### 6.1 Timeframe - reports must be made within 2 days

Where the mandatory reporting requirements apply, you must report to the Commonwealth Minister in writing **within 2 days** of becoming aware that the consumer goods or product related services in question have caused or may have caused a death or serious injury or illness.

The **2-day period** operates according to the *Acts Interpretation Act 1901* (Cth) and does not include the day on which you become aware of the incident. The 2-day period begins at the start of the next day and ends at 11.59pm of the second day.

The report becomes overdue after 11.59pm of the second day in the supplier's location. If the 2-day period ends on Saturday, Sunday or a public or bank holiday in the supplier's location, then the mandatory report is due the next business day. The following table explains the 2-day reporting requirement in more detail.

If you become aware of a death or serious injury or illness on:	Your mandatory report is due by 11.59pm of the next:
Monday	Wednesday
Tuesday	Thursday
Wednesday	Friday
Thursday	Monday
Friday	Monday
Saturday	Monday
Sunday	Tuesday

#### Best practice

There are no provisions under the ACL to waive or extend the reporting timeframe. For this reason, the best practice approach is to submit a report with the information known to you at that time that you need to submit a report, while you continue to investigate an incident or seek further information. Further supplementary reports may be submitted once more information is known. It is also important to have procedures in place to ensure you meet the fixed time frame for making a report.

## Example of a supplier submitting a mandatory report on time

On **Wednesday** a manufacturer of ceiling fans received an email from a customer stating that a ceiling fan supplied by the manufacturer detached from the ceiling and injured the customer's arm.

The manufacturer telephoned the customer on **Thursday** and, using this guideline, gathered information to assess whether the incident required a mandatory report.

On **Friday** the manufacturer used the evaluation tools in this guideline and concluded that the incident was reportable.

The manufacturer submitted a mandatory report via the 'mandatory reporting' form on the Product Safety Australia website, which date-stamped the report at **11:59pm on Friday**.

In this example the manufacturer complied with the 2-day reporting obligation by submitting the mandatory report by 11.59pm on Friday, the deadline for reporting this incident. A report date stamped at **12.01am on Saturday** would have been late.

## 6.2 Information to be included in the mandatory report

The mandatory reporting laws prescribe certain information that must be included in a mandatory report. When making a report, you must provide the following information:

- identification of the consumer goods, or the product related services and the consumer goods to which the services relate
- the following details, to the extent that you know this information, at the time of reporting:
  - when and in what quantities the consumer goods were manufactured, supplied in Australia, or imported or exported to and from Australia
  - when the product related services were supplied (where relevant)
  - the circumstances surrounding how the death or serious injury or illness in question occurred
  - the nature of any serious injury or illness suffered
  - any action you have taken or intend to take in relation to the consumer goods and/or the services (for example, if you intend to do a product recall).

At the time of submitting a report, you will also be asked to identify whether the product is covered, in Australia, by:

- a recall which you (or a coordinating supplier) are undertaking voluntarily, or
- a compulsory recall notice issued under section 122 of the ACL.

For further information about product recalls, see Chapter 7.6 of this guideline.

You are expected to make a report based on the information known at the time of reporting.

You are not required to verify or substantiate any of the information prior to making a report and you can provide updated information to the ACCC as it becomes available. Updated information can be supplied after the 2-day reporting deadline.

Chapter 8.3 has a suggested list of questions for you to ask the person providing information to help you evaluate whether the incident is reportable. The list of questions reminds you to ask the injured or reporting person for their consent to share their personal details. Sharing personal details with the ACCC, such as contact information, helps speed up any ACCC enquiries about the incident.

## 6.3 Making a report with incomplete information

If you do not have all the information to determine if the incident is reportable, you are still required to report the incident within the required 2-day timeframe.

The 2-day reporting requirement may not provide enough time to carry out an investigation into whether an incident meets all the criteria for reporting. For example, to assess whether the injury or illness is serious, whether the injury or illness required medical treatment by a medical practitioner or a nurse, or whether any exceptions to reporting apply.

Mandatory reporting is intended to provide early notification to the government about a potential risk without the need for suppliers to undertake an in-depth investigation.

If the information is uncertain or incomplete to determine if the incident is reportable, but somebody (including the customer) believes that the death or serious injury or illness was caused by or may have been caused by the use or reasonably foreseeable misuse of the consumer product, you must submit a report with the information available.

It is better to submit an insufficient or initial notification of a reportable incident within 2 days of becoming aware, rather than submit one that is late or not at all. If you submit a late report or do not submit a report, you risk breaching your reporting obligations. You can submit additional information to the ACCC as you become aware of it after the reporting deadline. The ACCC may contact you to obtain additional information.

**Submitting a mandatory report is confidential and not taken to be an admission of liability.**

If you do not submit a mandatory report for a reportable incident within 2 days of becoming aware, you risk being found guilty of a criminal offence or civil contravention.

### **Example of insufficient information to determine whether an incident is reportable**

A supplier receives and reads an email from a customer about a good they distribute, informing them that use of a consumer good caused the customer to go to hospital.

The supplier tries to contact the customer to find out if they received any form of medical treatment from a medical practitioner or a nurse for their injury but cannot get in contact with them. The supplier does not know whether the injury needed medical treatment and therefore whether it is reportable.

In this situation, the supplier must submit a mandatory report within 2 days of reading the email (that is, of becoming aware of the incident) as the customer believes the incident was caused by the supplier's product and has indicated that an injury occurred that required the customer to go to hospital.

Once the supplier contacts the customer, the supplier may provide further information to the ACCC about the type of medical treatment received to supplement the report.

## 6.4 How to submit a mandatory report

You will fulfil your mandatory reporting requirements by submitting a mandatory report online. The form is available at [www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0). The online form allows you 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. If you cannot use the online form you should contact the ACCC by phone on 1300 302 502 or by email on [mandatoryreporting@accc.gov.au](mailto:mandatoryreporting@accc.gov.au).

## 6.5 An agent can submit a mandatory report on behalf of multiple suppliers

A supplier can act as an agent for other suppliers or can authorise another supplier or agent to submit a mandatory report on their behalf. If there is at least one report of an incident there is no need for all suppliers to submit duplicate reports of the same incident.

### Best practice

An agent may submit a mandatory report on behalf of multiple suppliers associated with the same incident, and it would be best practice if, in such a case, 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 for this specific incident
- advises that they will provide a copy of the submitted report to all the identified suppliers
- provides written consent for the ACCC to disclose the details of the submitted report to each of the identified suppliers on request.

If another incident occurs with the same product or type of product, this will require a separate mandatory report.

### Example of an agency arrangement

A manufacturer becomes aware of a reportable incident and, in submitting the mandatory report, indicates that they are also reporting on behalf of all retailers of the consumer good associated with the incident. The manufacturer identifies all the retailers, advises that it will provide each of the retailers with a copy of the submitted report and consents for the ACCC to disclose the content of the report to each of the retailers.

Another reportable incident occurs days later, so the manufacturer submits a new mandatory report as an agent on behalf of all retailers, including the additional information required for the new incident.

## 6.6 How to submit a voluntary report

In some instances, reporting an incident will be required by the mandatory reporting provisions of the ACL and in other instances reporting an incident voluntarily is encouraged by the ACCC under the best practice approach.

Voluntary reports can be made using the Product Safety Australia website, [www.productsafety.gov.au/contact-us/for-retailers-suppliers](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers). If you cannot use the online form you should contact the ACCC by phone on 1300 302 502 or by email on [mandatoryreporting@acc.gov.au](mailto:mandatoryreporting@acc.gov.au).

# 7. After a mandatory report is submitted

## 7.1 What the ACCC does with mandatory reports

When a mandatory report is received, the ACCC will assess the information provided to determine the potential hazard associated with the consumer product and whether you have met the reporting requirements, including the reporting timeframe.

If the potential hazard requires further investigation or the mandatory report contains insufficient information, the ACCC will contact you. The ACCC may ask whether you have conducted your own safety investigation in relation to the incident and may request details of your findings, incident and supply rates, and copies of relevant test reports.

In cases where the product is potentially hazardous and you have not taken steps to resolve the issue, the ACCC will assist you to determine the most appropriate method of mitigating the potential hazard. In some cases, this may be a voluntary product recall.

The ACCC is not the lead safety agency for some consumer products and does not have responsibility under the ACL for goods which are used only for commercial or trade purposes. If another specialist safety agency is the lead agency for the product, the ACCC will send the report to that agency, provided you have consented to disclosure of the report. The ACCC will seek consent if you have not already provided it. If you choose not to consent, the ACCC may seek to disclose the record under provisions in the ACL if warranted by the potential safety risk. The specialist agency's guidelines will apply to the assessment of the report.

If the product is already the subject of a voluntary recall and the ACCC is responsible for publishing the recall notice on the Product Safety Australia website, the ACCC may ask the lead agency whether the recall notice needs to be updated to adequately alert consumers about the nature of the hazard and risk. This excludes food recalls.

Products covered by other agencies include:

- Agricultural and veterinary chemical products
- Electrical goods
- Food
- Gas products
- Industrial chemicals
- Marine safety and vessels
- Medicine and medical (therapeutic) devices
- Road vehicles and approved road vehicle components.

Some products covered by other agencies can also be consumer goods, meaning they are also regulated under the ACL. Links to other agencies can be found on the Product Safety Australia website, [www.productsafety.gov.au/about-us/who-regulates-what](http://www.productsafety.gov.au/about-us/who-regulates-what).

## 7.2 Confidentiality

Mandatory reports are confidential (section 132A of the ACL). The ACCC will not disclose a mandatory report, any part of a mandatory report, or information contained in a mandatory report unless the person who submitted the report consents to disclosure or the ACCC is otherwise authorised by law.

Confidentiality requirements under the ACL do not allow suppliers to obtain details of a mandatory report submitted about products they supply if that mandatory report was submitted by another supplier, unless the person that submitted the report consents.

The ACCC publicly reports on the total number of mandatory reports received annually and on the number of reports received within certain product categories (for example, whitegoods) to analyse trends. The data is aggregated to ensure confidentiality is maintained. Aggregated statistics, such as the number of voluntary reports received, may be included in public reports.

Voluntary reports made to the ACCC are treated in accordance with the ACCC/AER Information Policy. The policy outlines the ACCC/AER approach to collecting, using, and disclosing information (including confidential information) and is available at [www.accc.gov.au/publications/accc-aer-information-policy](http://www.accc.gov.au/publications/accc-aer-information-policy).

## 7.3 Mandatory reports are not an admission of liability

The general rule of product liability is that consumers who suffer loss or damage because of defects in a manufacturer's good can take legal action against the manufacturer and a court can award compensation to cover these losses.

Under section 131(6) and section 132(6) of the ACL submitting a mandatory report is not 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 or serious injury or illness. By law 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.

## 7.4 Penalties for not reporting

If you fail to notify the Commonwealth Minister within 2 days of a reportable incident, you may be found guilty of a criminal offence. If found guilty, you may be liable to pay a criminal penalty of up to \$16,650 for a body corporate or \$3,330 for a person other than a body corporate.

This is an offence of strict liability, so a court is not required to consider whether you intended to refuse or fail to notify the Minister.

### **Suppliers to report consumer goods etc. associated with the death or serious injury or illness of any person (section 202 of the ACL)**

1. A person commits an offence if:
  - a. the person is required by section 131 or 132 to give a notice to the Commonwealth Minister; and
  - b. the person refuses or fails to give the notice as required by that section.

Penalty:

- a. if the person is a body corporate – \$16,650; or
  - b. if the person is not a body corporate – \$3,330
2. Subsection (1) is an offence of strict liability.

Civil penalties can also apply to non-compliance with the mandatory reporting requirements. These are monetary fines imposed and collected by civil courts. The applicable civil pecuniary penalties are up to a maximum of \$16,650 for a body corporate or \$3,330 for a person other than a body corporate.

The ACCC approaches enforcement of the ACL according to its Compliance and Enforcement Policy.<sup>3</sup> If ACCC intelligence suggests there is under-reporting of mandatory reports, the ACCC may investigate further. If a supplier has contravened their mandatory reporting obligations, the ACCC will consider, in line with its Compliance and Enforcement Policy, what, if any, enforcement action to take. Factors may include:

- the detriment caused by the contravention

<sup>3</sup> [www.accc.gov.au/publications/compliance-and-enforcement-policy](http://www.accc.gov.au/publications/compliance-and-enforcement-policy)

- the supplier's cooperation in remedying the contravention
- the supplier's history of compliance
- how long the mandatory report was overdue.

### **ACCC v Thermomix In Australia Pty Ltd**

In April 2018, Thermomix In Australia Pty Ltd (Thermomix) was fined a total of \$4.6 million by the Federal Court for various contraventions of the ACL in relation to its Thermomix kitchen appliances.

A portion of this fine (\$108,500) was in relation to a failure to lodge 14 mandatory reports within 2 days of becoming aware of the serious injuries caused by Thermomix kitchen appliances. Some of the mandatory reports were submitted a few days late and, in one case, a mandatory report was 3 years overdue. In each of the 14 incidents Thermomix users suffered severe burn injuries requiring some form of medical treatment.

The Federal Court also found that Thermomix breached the ACL in other ways, including by making false or misleading representations to certain consumers through its silence about a safety issue affecting its TM31 appliance, which Thermomix knew about.

Thermomix was aware that there was a potential risk of injury to users from the TM31 appliance's lid lifting, which could result in hot food or liquid coming out from the mixing bowl and causing severe injuries to the user. Thermomix did not disclose this risk until several months later.<sup>4</sup>

### **ACCC v Woolworths Ltd**

In February 2016, Woolworths Ltd (Woolworths) was fined \$3,057,000 million for knowingly selling unsafe goods. A portion of this fine (\$57,000) was in relation to its failure to lodge 8 mandatory reports on time.

The court declared that Woolworths contravened the ACL in various ways, including by failing to report serious injuries on 8 occasions within 2 days of becoming aware that serious injuries may have been caused by their products.

The defects in Woolworths' products caused several serious injuries. For example, when the handle of a deep fryer broke during use it caused burns from hot oil, and when a drain cleaner had a defective cap on the bottle, it caused chemical burns, including to a young child.<sup>5</sup>

## **7.5 Product recalls**

If you become aware that a consumer product you supply may be unsafe, you should consider a voluntary product recall. Detailed information about the recall process is available on the Product Safety Australia website, [www.productsafety.gov.au/publication/consumer-product-safety-recall-guidelines](http://www.productsafety.gov.au/publication/consumer-product-safety-recall-guidelines).

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4 [www.accc.gov.au/media-release/thermomix-ordered-to-pay-penalties-of-more-than-46-million](http://www.accc.gov.au/media-release/thermomix-ordered-to-pay-penalties-of-more-than-46-million)

5 [www.accc.gov.au/media-release/woolworths-misled-consumers-over-product-safety-hazards---ordered-to-pay-over-3-million-in-penalties](http://www.accc.gov.au/media-release/woolworths-misled-consumers-over-product-safety-hazards---ordered-to-pay-over-3-million-in-penalties).

# 8. Compliance culture

## 8.1 Internal procedures

The ACCC expects suppliers to have internal policies, processes, and procedures to ensure that an appropriate person within an organisation has responsibility for consumer product safety mandatory and voluntary reporting.

Your internal policies should ensure an appropriate person can quickly receive information from anyone within your organisation about incidents associated with the consumer products you supply. You are responsible for reporting regardless of who in your organisation becomes aware of a reportable incident. You should routinely remind your employees, contractors, and other representatives about the mandatory reporting obligations.

The notice below is an example of information that should be provided to employees to ensure effective complaint handling and mandatory reporting processes. Employees, contractors, and any other persons representing or acting as an agent of your business need to be aware of these requirements.

## 8.2 Notice about mandatory reporting obligations

**Subject: Our mandatory reporting obligations**

**What you need to do**

If you become aware of any incident where our product or service may have caused a death or serious injury or illness, you must report it to **[insert supplier contact point]** immediately.

A 'serious' injury or illness is one where:

1. the physical injury or illness is acute
2. the physical injury or illness requires medical or surgical treatment
3. treatment by, or under the supervision of, a medical practitioner or a nurse was required (whether or not in a hospital, clinic, or similar place).

It doesn't matter how you become aware of the death or serious injury or illness; you must report it to **[insert supplier contact point]**. This includes (but is not limited to):

- Notifications through customer complaints
- Information provided by customers in writing or verbally
- News or media reports
- Comments made on social media.

The **[insert supplier contact point]** can be contacted by:

E: **[insert email of supplier contact point]**

T: **[insert telephone number of supplier contact point]**



## 8.3 Sample questions to obtain information about an incident

The questions below can assist a supplier to ask relevant questions of the person reporting an incident to assess whether the incident requires a mandatory report.

- Describe what happened.
- What product were you using?
- How were you using the product when the incident occurred?
- Describe your injury or illness.
- What are/were your symptoms?
- When were you using the product?
- How soon after using the product did the symptoms develop?
- Do you believe that using the product caused your injury or illness? Why?
- Were the symptoms related to any existing ailments or medical conditions?
- Have you seen, or do you plan to see, a medical practitioner or a nurse for your symptoms? If so, when?
- Have you received, or will you receive, any form of medical or surgical treatment? If so, what kind of treatment did you or will you receive?
- I might be legally required to make an mandatory report about this incident. May I give your contact details to the ACCC to assist with any investigation? Privacy laws do not permit me to give your details to the ACCC, unless you give your consent.
- Can I contact you again if I need additional information? Please provide your contact details.

## 8.4 Compliance programs

A compliance program is an internal system or process followed by a business, which is designed to:

- identify and reduce the risk of breaching the ACL and mandatory reporting obligations
- remedy any breach that may occur
- create a culture of compliance within the business.

Each organisation's circumstances are different. A compliance program should be tailored to the needs of your organisation. What you include in your compliance program will depend on the size and risk profile of your business, but it should be effective in achieving compliance at all levels of your business.

## 8.5 Compliance program templates

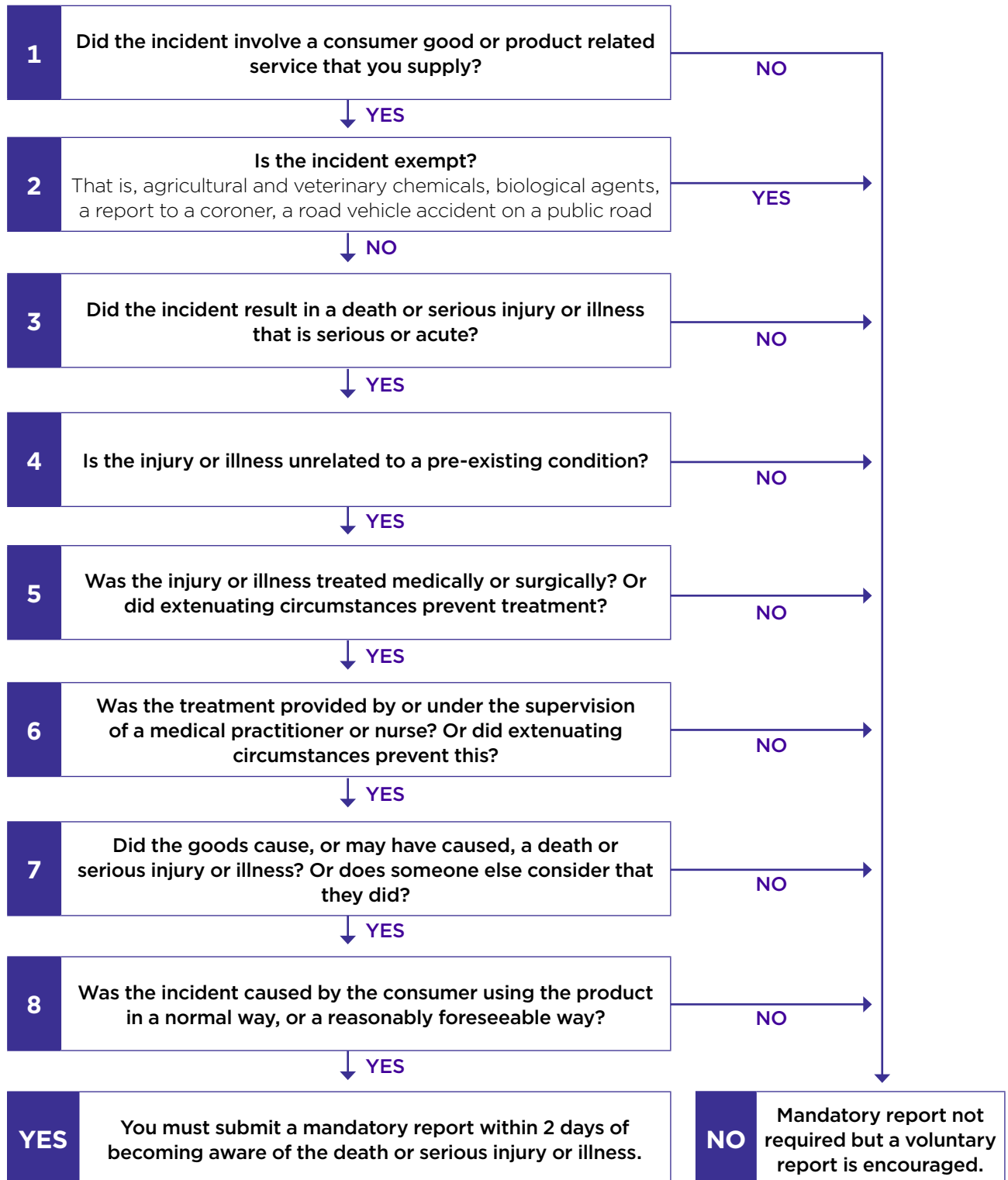
To assist businesses that do not have the resources to develop a tailored compliance program, the ACCC has produced a series of templates to help businesses develop their own programs. These templates:

- provide an indication of what the ACCC considers advisable in compliance programs implemented by businesses voluntarily
- provide an example of what the ACCC is likely to accept by way of compliance programs included in an administrative resolution to an enforcement action.

There are 4 different templates, each reflecting what the ACCC considers appropriate given the size of the business offering the undertaking – Level 1 being for micro-businesses and Level 4 designed for large corporate entities. The templates are available online at [www.accc.gov.au/business/business-rights-protections/implementing-a-compliance-program](http://www.accc.gov.au/business/business-rights-protections/implementing-a-compliance-program).

# Annexure 1 - Tools for evaluating whether an incident requires a mandatory report

Flowchart - An incident has occurred - is a mandatory report required?



# Checklist – does the incident require a mandatory report?

	Details	If yes	If no
1.	<p>Are you a supplier of a consumer good or product related service?</p> <p><b>Supplier:</b> retailer, wholesaler, distributor, importer/exporter, manufacturer; includes sellers, leasers, exchangers and hirers</p> <p><b>Consumer good:</b> products intended to be used, or of a kind likely to be used, for personal, domestic, or household use or consumption (section 2(1) of the ACL)</p> <p><b>Product related service:</b> an installation or maintenance of a consumer product</p>	<p><b>If yes;</b> Continue</p>	<p><b>If no;</b> Not reportable but the ACCC encourages you to submit a voluntary report</p>
2.	<p>Is the incident reportable to another authority and therefore exempt under Regulation 92?</p> <p><b>Goods or circumstances exempt from reporting under the ACL:</b></p> <ul style="list-style-type: none"> <li>▪ agricultural and veterinary chemicals</li> <li>▪ biological agents</li> <li>▪ already reported to a coroner</li> <li>▪ road vehicle accidents on public roads.</li> </ul> <p>Note: Some incidents of death or serious injury or illness need to be reported to a different specialist or lead agency but are not exempt from the mandatory reporting requirements (see Chapter 5.2 of this guideline). An explanation of the role of other regulators and agencies is available at <a href="http://www.productsafety.gov.au/about-us/who-regulates-what">www.productsafety.gov.au/about-us/who-regulates-what</a></p>	<p><b>If yes;</b> Not reportable (but may be reportable to another authority)</p>	<p><b>If no;</b> Continue</p>
3.	<p>Did the incident involve a death or serious injury or illness?</p> <p><b>Serious injury or illness</b> (under section 2(1) of the ACL) means:</p> <ol style="list-style-type: none"> <li>1. the physical injury or illness is <b>acute</b></li> <li>2. the physical injury or illness requires <b>medical or surgical treatment</b></li> <li>3. that treatment was required <b>by, or under the supervision of, a medical practitioner or a nurse</b> (whether or not in a hospital, clinic or similar place).</li> </ol> <p><b>An acute injury or illness:</b></p> <ul style="list-style-type: none"> <li>▪ arises through a sudden onset (as opposed to gradually developing over time)</li> <li>▪ is brief and severe</li> <li>▪ is not a chronic injury or illness (that is, it is not an aggravation/recurrence of a condition that existed prior to use of the product, a 'pre-existing condition').</li> </ul>	<p><b>If yes;</b> Continue</p>	<p><b>If no;</b> Not reportable but the ACCC encourages you to submit a voluntary report</p>
4.	<p>Do you or someone else consider that the death or serious injury or illness was caused, or potentially caused, by the use or foreseeable misuse of the consumer good or product related service?</p> <p><b>'Use of'</b> means using consumer goods or product related services for their primary, normal or intended purpose (for example, use of a chair for sitting on).</p> <p><b>'Foreseeable misuse of'</b> means using consumer goods or product related services in a way not intended, or in an improper way, but which is foreseeable. Something is considered to be reasonably foreseeable if it is not far-fetched or fanciful in the circumstances (for example, standing on a chair to fix a light).</p> <p><b>Note:</b> If there is doubt about whether the consumer good caused or may have caused the death or serious injury or illness, it is appropriate to report the incident.</p>	<p><b>If yes;</b> Continue</p>	<p><b>If no;</b> Not reportable but the ACCC encourages you to submit a voluntary report</p>

Details		If yes	If no
5.	Has an agent submitted a mandatory report on your behalf according to the requirements? See the guideline reference for requirements (Chapter 6.5).	<b>If yes;</b> No further action required—incident already reported	<b>If no;</b> Continue

6. You must submit a written notice containing information **to the extent known at the time** to the Commonwealth Minister within **2 days of becoming aware** of the death or serious injury or illness.

The report can be submitted using the ACCC's Product Safety Australia website, [www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0](http://www.productsafety.gov.au/contact-us/for-retailers-suppliers/mandatory-report-0)

# Annexure 2 - Exceptions from mandatory reporting: 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 December 2021.<sup>6</sup>

Regulation 92 specifies the existing reporting schemes that exempt an incident from the mandatory reporting requirements.

## COMPETITION AND CONSUMER REGULATIONS 2010 - REG 92

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

For paragraphs 131(2)(c) and 132(2)(c) of the ACL, 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	<i>Agricultural and Veterinary Chemicals Act 1994</i> (Cth)
2	<i>National Health Security Act 2007</i> (Cth)
3	<i>Therapeutic Goods Act 1989</i> (Cth)
4	<i>Coroners Act 2009</i> (NSW)
5	<i>Public Health Act 1991</i> (NSW)
6	<i>Road Transport (Safety and Traffic Management) Act 1999</i> (NSW)
7	<i>Coroners Act 2008</i> (Vic)
8	<i>Public Health and Wellbeing Act 2008</i> (Vic)
9	<i>Road Safety Act 1986</i> (Vic)
10	<i>Coroners Act 2003</i> (Qld)
11	<i>Motor Accident Insurance Act 1994</i> (Qld)
12	<i>Public Health Act 2005</i> (Qld)
13	<i>Transport Operations (Road Use Management -- Road Rules) Regulation 2009</i> (Qld)
14	<i>Coroners Act 1996</i> (WA)
15	<i>Food Regulations 2009</i> (WA)
16	<i>Health Act 1911</i> (WA)
17	<i>Road Traffic Act 1974</i> (WA)
18	<i>Coroners Act 2003</i> (SA)
19	<i>Public and Environmental Health Act 1987</i> (SA)
20	<i>Road Traffic Act 1961</i> (SA)
21	<i>Coroners Act 1995</i> (Tas)
22	<i>Public Health Act 1997</i> (Tas)
23	<i>Traffic Act 1925</i> (Tas)
24	<i>Coroners Act 1997</i> (ACT)
25	<i>Public Health Act 1997</i> (ACT)
26	<i>Road Transport (Safety and Traffic Management) Act 1999</i> (ACT)
27	<i>Coroners Act</i> (NT)
28	<i>Notifiable Diseases Act</i> (NT)
29	<i>Traffic Act</i> (NT)
30	Regulations made under an Act mentioned in items 1 to 12, 14 and 16 to 29

<sup>6</sup> The online link is available at [http://classic.austlii.edu.au/au/legis/cth/consol\\_reg/cacr2010374/s92.html](http://classic.austlii.edu.au/au/legis/cth/consol_reg/cacr2010374/s92.html).



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