

Franchising Alert May 2011

Franchisor & Franchisee Mandatory Reporting Obligations: Consumer Goods & Product Related Services that cause death or serious injury

On 1 January 2011 the new Australian Consumer Law (ACL) implemented by the *Competition and Consumer Act 2010* (Cth) imposed mandatory reporting obligations on suppliers of "Consumer Goods" and "Product Related Services" to report incidents where a death or serious injury or illness is caused or may have been caused by the consumer good or product related service.

Franchisors and franchisees need to understand and ensure that they comply with their individual reporting obligations where relevant products or services cause serious injury, illness or death. A failure to report – within two days of becoming aware of the incident – is a strict liability offence with penalties of up to \$16,500 for a body corporate and \$3,300 for an individual.

Details on when an obligation to report arises and what exceptions might apply are set out in our October 2010 Alert "New mandatory reporting for consumer goods and product related services".

Why is franchising different?

Most consumer protection provisions under the former *Trade Practices Act 1974* (Cth) applied to transactions directly with customers. Ordinarily, those transactions involved the franchisee rather than the franchisor.

However, the mandatory reporting obligations imposed by the ACL are different. The obligation to report depends on the type of goods or services supplied, not the relationship between the retailer and the consumer. Further, all suppliers in a supply chain for consumer goods need to report where they become aware of an incident that involves their consumer product or product related services and which has caused or may have caused a death or serious injury or illness.

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However, as the franchisor and franchisee are separate legal entities, the knowledge of an incident by a franchisee does not automatically flow to the franchisor. Both franchisors and franchisees should also ensure that they have appropriate and efficient processes for assessing any incident in which their products or services caused or may have caused a death or serious injury or illness and that they can provide a report in compliance with the ACL within two days.

What should franchisors do?

Franchisors should therefore review their franchise agreement to assess whether there is currently an incident reporting obligation on their franchisees and if not, whether it is appropriate to include such an obligation. Further, franchisors wishing to maintain those arrangements should ensure they are effective in that franchisees provide accurate and timely reporting of all relevant incidents. To achieve this, they should insist that franchisees themselves ensure their employees are aware of the obligation to notify their manager and to maintain accurate records of each incident.

Franchisors should also maintain their own processes for investigation and record keeping in line with the requirements of the ACL.

If you need further advice about the mandatory reporting requirements and whether your franchise agreement and system will comply (or enable you to comply) with those obligations, please contact a member of our Franchising team listed below.