

Fit for Purpose

By Gillian Kinder

Suppliers will be aware that it is essential that consumer products are 'fit for purpose'; what is more suppliers need to be cognisant of the fact that product safety is part of that 'fit for purpose' condition. Product safety is not a new concept, however attention should be paid to the content of the *Competition and Consumer Act 2010* (amending the former *Trade Practices Act*) which imposes additional obligations on manufacturers, suppliers and other participants in the supply stream.

The legislative change to national obligations was effective from 1 January 2011 and consumer law (www.consumerlaw.gov.au) and product safety (www.productsafety.gov.au) websites are available to provide business and consumers with a lot of useful advice in relation to the product safety aspects of the legislation. The published advice to consumers is explicit and includes the following elements of consumer protection:

- Entitlement to expect safe goods and services
- Entitlement to expect every retailer, manufacturer and importer complies with product safety laws
- All products must be safe, durable, free from defects, fit for purpose
- All services must be delivered with care, skill and within a reasonable time
- Businesses must honour all guarantees including express and extended warranties
- Businesses must not make false, misleading or deceptive claims about a product or service including claims about safety

All well and good from a consumer point of view but what are some of the implications for business. Mandatory safety standards are in place for a variety of specific products, and have been for some time; as the title suggests, compliance is essential. Mandatory standards can apply from the manufacturer through to hirers of a product, and in terms of imported product, where an overseas manufacturer does not have representation in Australia the importer is deemed to be the manufacturer. Alongside mandatory standards there are many voluntary standards in place, defining specifications to ensure products and services are safe, reliable and provide a consistent performance; where a product or service is covered by a voluntary standard alone it is not illegal to supply a product that does not meet the standard, however mandatory standards are law and there are penalties that attach to compliance breaches.

A supplier must nominate the standard with which they are compliant if required to do so by a consumer protection agency; non compliance in this respect is a criminal offence of strict liability with penalties of up to \$22,000 for a body corporate and \$4,400 for an individual. Failure to comply with the requirements of a mandatory safety standard is also a criminal offence if found guilty, with maximum penalties of \$1.1m for a body corporate or \$220,000 for an individual and civil penalties for the same amounts can apply.

Going back to consumer product and service expectations (as above) the onus is on the supplier to meet those expectations, which extrapolates out to detailed product knowledge, overt compliance with safety standards and Australian standards and the application of quality assurance at all points in the supply stream. (If a defect is found a supplier has the right to implement a voluntary product recall.)

Things can go wrong, it is accepted that no business is perfect; nevertheless the requirements of the legislation mean it is increasingly important to have a customer complaints procedure in place of which all staff and interested parties are aware, including those that handle internet sales. Noting,

and complying with the requirement that, businesses must honour all guarantees and warranties is not the full story in terms of the *Competition and Consumer Act 2010*. The Act is quite specific on a supplier's obligations in relation to serious injury or death potentially occurring from a product or product-related service. Making reference to Division 5 sections 131-132A of the legislation there is a legal requirement that suppliers must notify the relevant Commonwealth Minister within forty eight hours of **becoming aware** that a person has suffered serious injury, illness or death associated with a consumer good or product-related service that they have supplied in either Australia *or* overseas; reporting can be via the online form available on the product safety website. This reporting requirement also applies in instances of foreseeable misuse of the product by a consumer. The interpretation of serious injury or illness is one requiring treatment by or under the supervision of a qualified doctor or nurse. Information to be reported to the Minister includes manufacture, circumstances and nature of the injury, illness or death, action or intended action by the supplier in relation to the goods or service concerned. Failure to comply with this reporting requirement is a criminal offence of strict liability, maximum penalties \$16,650 for a body corporate and \$3,330 for an individual.

We have here a snapshot of some of the implications of breaching Australian Consumer Law in terms of product safety; suppliers are encouraged to familiarise themselves with the terms of the Act in relation to their own areas of supply and be comfortable that their products and services are fit for purpose.

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