

INTRODUCTION

*John Goldring*¹

The problem and the policy

Sometimes people suffer loss or damage as a result of defective products. The aim of product liability laws – laws that relate to loss or damage caused by products – is to encourage the prevention of loss or damage caused by something wrong with products, and if that cannot be achieved, to compensate those who have suffered the loss or damage. The overall objective is to promote safety and injury prevention.

The legal methods used for this purpose are generally of two types: either laws which prescribe norms of behaviour or quality standards with which products must comply; or laws which provide the conditions under which compensation is to be paid, how much, and by whom, to the injured party.² It is possible to have provisions that both establish product quality or safety standards, and impose penalties for breach, but which also give rise to claims for compensation where people suffer loss or damage as a consequence of a breach of the laws.³ This is probably the ideal incentive to producers and importers to ensure that their products are safe.

In theory, prescription of standards is more effective as a means of injury prevention, but in practice it breaks down because of difficulties in enforcement. In addition, the current dominant ideology of many governments is economic rationalism, which seeks to minimise or abolish any type of regulation by the state, regardless of social or other cost.

Some countries covered by the chapters that follow have laws that ‘prescribe, or allow prescription of product standards, either generally (as in, for example, China), or in relation to specific classes of products (as is possible in Australia). The policy question that must be faced in relation to such laws is ‘What is the most effective and efficient way of setting appropriate standards for safety and of enforcing them?’.

If the law provides for compensation for loss or damage, the policy questions are about the selection of the party best able to avoid the risk of loss, and the most effective and efficient way of transferring the loss from

1 Vale (1943–2009). BA, LLB (Hons) (Syd); LLM (Colum); a Judge of the District Court of New South Wales; Emeritus Professor of Law, University of Wollongong; formerly Member (1987–1992) Australian Law Reform Commission.

2 These questions are considered in detail in J Goldring and T Young, *Product Liability: Remedies and Enforcement*, *Product Liability Research Paper No 5*, Australian Law Reform Commission, Sydney, 1989.

3 As under the *Australian Trade Practices Act 1974* (Cth), Pt V, Divs 1 and 1A.

This is a preview. Not all pages are shown.