

Chapter 8

Product Liability and Safety Regulation

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I The Setting

A Responding to Consumer Product Safety Concerns: Markets, Private Law and Public Law

In the Final Report for its *Review of Australia's Consumer Policy Framework: Inquiry Report*, released by the Productivity Commission (PC) in May 2008, the PC's Chapter 8 on 'Defective Products' succinctly states the general problem for law and policy in this field:¹

Defective products impose a range of costs on consumers and the broader community.

- In the case of unsafe products, these costs can include both physical and psychological injury, the financial burden of income lost due to incapacity and costs associated with accessing medical treatment. Broader societal impacts will also be felt through greater demands on the public health and social welfare systems and the temporary (or permanent) reduction in the economy's productive capacity.
- For products that otherwise fail to meet reasonable levels of quality or performance, some consumers will bear the additional cost of procuring replacement products and the dissatisfaction associated with the original purchase. Economic activity may also be impeded if some consumers are less willing to purchase products whose quality and performance is uncertain.

Reputable firms do not, of course, intentionally set out to produce and market unsafe or otherwise defective goods. But some products inherently

* Section III was written primarily by Luke Nottage, drawing on his article entitled 'Suppliers' Duties to Report Product-Related Accidents under the New Australian Consumer Law: A Comparative Critique' (2011) 25 *Commercial Law Quarterly* 3. Sections II.B and II.C.1-6 of this chapter elaborate, also with permission, from Clayton Utz, *The Australian Consumer Law: An Essential Guide for Product Manufacturers and Suppliers* (December 2010) available at <http://www.claytonutz.com/docs/ACL_Dec_2010.pdf> accessed 13 September 2012.

1 See Productivity Commission (PC), *Review of Australia's Consumer Policy Framework* (Inquiry Report No 45, 30 April 2008) Vol 2 at <<http://www.pc.gov.au/projects/inquiry/consumer/docs/finalreport>> accessed 13 September 2012, pp 171-172.

This is a preview. Not all pages are shown.