

## LRC proposes stricter liability for product defects

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The Law Reform Commission today (Thursday) published a Report on proposals to reform the law governing compensation for injury and damage caused by defective or unsafe goods.

Ms Audrey Eu SC, JP, chairman of the sub-committee on the topic said that, given the recent incidents concerning unsafe products, product safety was clearly an issue of public concern.

Ms Eu explained that under the existing law, a person who suffered injury from an unsafe or defective product could have a claim against the retailer under contract law. Under the Sale of Goods Ordinance (Cap 26), for persons dealing as consumers, there is an implied condition that the goods are of merchantable quality, which includes the requirement that the goods should be as free from defects and as safe as it is reasonable to expect.

The drawbacks of contract law, according to Ms Eu, were first, it would lead to a chain of legal action, as each supplier in the chain of distribution would have to sue its supplier to seek indemnity; and second, if the person who suffered injury was not the one who paid for the unsafe product, technically there is no contractual relation, and the injured person is denied a contractual claim.

Another alternative under the existing law would be to sue in negligence. Ms Eu said that the general public might not find negligence law user-friendly, and a claimant would have to prove all the technical elements of negligence, and expert evidence was likely to be required.

It is against that background that the Commission has decided to review the existing law taking into consideration developments in other countries. Ms Eu said that the emerging international trend was towards enacting strict product liability legislation to supplement the traditional contract and negligence law, and Hong Kong was lagging behind many jurisdictions, including the European Community countries, the United States, Australia and Japan.

The main recommendations in the Report are:-

- \* The law governing compensation for injury and damage caused by defective or unsafe goods should be expanded beyond the existing spheres of contract law and negligence law.
- \* The proposed new form of liability should be based on the defect approach, which means that a product is regarded as defective if it does not meet the standard of safety that persons generally are entitled to expect.
- \* The standard of safety required should be judged by reference to the standard of the general public, instead of the claimant.
- \* The standard of safety required should be judged at the time the product was put into circulation.
- \* Manufacturers, producers, own-branders and importers should be jointly and severally liable to claimants. As for wholesalers, distributors and retailers, they would be liable only if they fail to identify within reasonable time the person who supplied the product to them.
- \* The proposed new form of liability should apply to all the products covered by Part I of the Consumer Protection Act 1987. Unprocessed natural products and game, and component parts should also be covered.
- \* Any injured person, whether or not he is party to a contract, and whether or not he is a user of the product or a mere bystander, should be covered by the proposed new form of liability.
- \* Specific defences should be made available to protect legitimate business interests. Such defences should include the fact that the defect is attributable to compliance with statutory standards, that the product was not supplied by the defendant, that the product was supplied otherwise than in the course of business, or that the defect did not exist at the time of supply. The defendant would have a partial defence if the damage is caused partly by the fault of the claimant.
- \* The defendant should also have a defence if the state of scientific and technical knowledge at the time of supply did not enable the defect to be discovered.
- \* Compensation under the proposed new form of liability should not be subject to

any maximum or minimum limits, but provisions should ensure that a claimant cannot recover twice for the same injury or damage.

\* Disclaimer clauses should not be allowed to limit or avoid any liability under the proposed legislation.

\* Two time limits should apply to claims under the new liability. A three-year limitation period should run from the date of any injury caused by, or knowledge of, the defect and a ten-year period (which overrides the three-year period) should run from the date the defective product was first supplied by the defendant.

\* The application of the proposed legislation should not be limited to products supplied in Hong Kong only, save that importers should not be liable for products which are imported to Hong Kong solely for the purpose of re-export.

Anyone who wishes to obtain a copy of the Report should write to the Secretary, The Law Reform Commission, 20th Floor, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong. The Report is also available on the Government home page <http://www.info.gov.hk> (under "topical information: Law Reform Commission").

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