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AUSTRALIAN CONSUMER LAW REVIEW

Submission from Master Electricians Australia



Introduction

Master Electricians Australia (MEA) is a dynamic and modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

With electrical safety a critical priority for our organisation, the primary focus of our submission will be on the Australian Consumer Law's national product safety framework.

Comments

Current approach to product recalls and remedies

The widespread recall of Infinity branded electrical cable in 2013 demonstrated the need for systems to be put in place that would better protect consumers from unsafe products.

➤ RECALL DELAYS

The Australian Competition and Consumer Commission's (ACCC) delay in issuing a nationwide recall and the widespread sale of the dangerous Infinity cable revealed significant flaws in the way recalls are handled in Australia. Fair Trading NSW was the first regulator to issue a recall of the dangerous cable in October 2013. Ten months later, on 27 August 2014, the ACCC announced a national safety recall. In the meantime, tens of thousands of Australians had purchased these cables, completely unaware of the ticking time bombs in their homes.

➤ IMPACT OF A PARTIAL RECALL

Another concern surrounding the recall of Infinity cables was the partial nature of the recall, allowing cable located in the hard to access areas of a home to be left in situ. Based on the information provided in the ACCC's recall notice on 27 August 2014, homeowners with cable located in "inaccessible areas" would not be funded for replacement meaning that some cable remains in place. That creates an ongoing safety and fire risk from defective cable, with such risk increasing over time as the cables deteriorate.

We have very serious concerns around the placement of stickers in electrical meter boxes warning that faulty cable remains in the house. In the first instance, placing such a sticker would be a clear acknowledgement by a contractor that he or she is aware of electrical fittings on the premises that are not in compliance with safety regulations. This creates a potential legal liability for the contractor who, under the ACL, has an obligation to remove the defective cable and replace it with cable of an acceptable quality. The ACCC also confirmed that the onus is on electricians and builders to contact consumers for whom they installed any infinity cable and organise for removal and replacement. This creates a significant financial burden for contractors, the vast majority of whom are running small businesses with limited resources and purchased the cable with no knowledge it was noncompliant.

MEA recognises the critical importance of consumers having dangerous products removed from their home as quickly as possible. To make the recall process as smooth as possible, we recommend that the impact on both consumers and third parties, such as installers of electrical products, be taken into consideration.

To affect this, the product recall process should include a formal stage of industry consultation to ensure matters such as those raised above can be identified and strategies put in place to minimise the impact on consumers and industry.

➤ SUPPLIER LIQUIDATION

The Infinity cable disaster also highlighted the problems that can arise when an overseas supplier goes into liquidation after a product they have manufactured, imported or supplied is identified as unsafe and made subject to a recall. To minimise the impact a supplier's liquidation has on consumers and industry participants, we recommend that all manufacturers, importers and suppliers of products hold mandatory recall insurance.

➤ IMPORTED ELECTRICAL PRODUCT

The availability of imported electrical products that do not meet Australian safety standards is undoubtedly on the rise, with the Infinity cable recall followed by a mass recall of faulty self balancing scooters or hoverboards in December 2015. While the recall process is critical in preventing the continued sale of dangerous goods, active strategies must be implemented to address the problem before the need for a recall arises. The complexity of the import process and the inordinate number of electrical articles that arrive in Australia on a daily basis necessitates a layered solution. MEA proposes the following hierarchy of measures for all "market ready" electrical articles in order to be imported into Australia:

1. The article must display evidence that it complies with the relevant Australian standard;

OR

2. If no evidence provided of compliance with the Australian standard, accreditation from the National Association of Testing Authorities (NATA) must be supplied;

OR

3. In the absence of evidence of compliance with the Australian Standard or NATA accreditation, the article has been verified as safe through independent engineering testing either overseas or onshore.

As well as the registered item itself, any items that can be attached to the electrical article, such as plug in power supplies must also be demonstrated as being compliant.

It is important to note that the above procedure would only pertain to electrical equipment that has been assembled. These requirements would not apply to electrical components as, for these items, compliance could not be achieved. State based obligations would be in place to ensure standards are being met for items such as these.

Clearly, the logistics of this system would need to be clarified further. As an authority on electrical safety, MEA would be eager to assist government in working on the establishment of such a system.

Register of products sold

MEA would support the introduction of a register of customer details for major purchases to facilitate later recalls. Under this system, sellers of high risk products, such as building and electrical goods, would be obliged to maintain a register of those products that require

installation by a licensed tradesperson, namely those products that form part of a building structure. The register would be used to contact purchasers in the event of a product safety recall.

Introducing a register would assist regulators to identify the location of any equipment of this type that was later subject to a recall. This would facilitate a ready means to contact those at risk to ensure they take the steps to remove the product from their homes.

A mandatory system of this type would also provide more effective support to suppliers when they are required to withdraw unsafe or non-compliant product from the market.

Additionally, requiring purchasers to provide their details could act as a deterrent to those who are intending to perform unlicensed building and electrical work.

While the above action may require retailers and wholesalers to dedicate resources to establishing a system to record this information, such systems need to be implemented to ensure the safety of consumers. By requiring this level of responsibility, the register would also provide a level playing field for all suppliers of high risk products, including Australian based online suppliers who would be required to participate in the implementation of a register.

Raising awareness

Industry can continue to play an important role in raising awareness about faulty product. Through MEA's member, industry and media communication channels we have been able to reach thousands of industry participants and the wider public about product safety concerns.

In this respect, it is imperative that regulators have a ready means to share information with industry bodies regarding noncompliant product. Industry bodies have established channels to rapidly communicate with industry and are a trusted knowledge source for many.

Intelligence from industry participants, who are in a prime position to identify patterns of faulty product, would be invaluable to halt the continued sale of non-compliant products. It is recommended that government introduce a formalised chain of communication for industry bodies to pass on concerns about faulty building products to regulators.

MEA appreciates the opportunity to contribute to the discussion on the Australian Consumer Law. We are optimistic that our recommendations will be taken into account as the review continues.

Regards,



Malcolm Richards
CEO