

AUSTRALIAN CONSUMER LAW REVIEW

Interim Report

Submission from Master Electricians Australia



Introduction

Master Electricians Australia (MEA) is a national employer association representing the interests of electrical contractors and the broader electrotechnology industry. As one of the longest running organisations of its kind, MEA has established itself as the leading voice of the electrotechnology sector. MEA is recognised by industry, government and the community as the electrical industry's foremost business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

As with our response to the Australian Consumer Law Review Issues Paper, MEA's priority of electrical safety means the focus of our submission will be on the Australian Consumer Law's national product safety framework. We urge the continued consideration of the recommendations detailed in our response to the Issues Paper which we continue to advocate for. The below is intended to further clarify some of the key points made and comment on other issues raised by fellow stakeholders.

Comments

Product safety

We share the concerns expressed by other stakeholders that the current product safety regime requires a more proactive approach. In our submission to the Issues Paper we detailed our recommendations on strategies to protect consumers from unsafe product which include introducing a register for electrical products sold, mandatory recall insurance, industry consultation and a performance-based approach to compliance with product safety standards using a hierarchy of measures for all "market ready" electrical articles in order to be imported into Australia.

➤ BAN ON UNSAFE PRODUCTS

The idea put forward in the Interim Report of imposing a ban on unsafe products being sold in Australia would appear to address the problem of faulty/non-compliant goods being sold to consumers. However, there are a number of issues that would need to be clarified if such a provision were to have the intended affect. Primarily, the precise definition of an "unsafe product" would need to be made clear. We would suggest such a ban apply only to products that fall under an Australian safety standard as the broad term "unsafe product" could apply to any number of items sold in Australia. A definition that is too broad would make enforcement too significant an undertaking and render the ban ineffective at preventing faulty goods entering consumers' homes.

We also express some caution about the proposition that a general safety provision should apply where an unsafe product is "knowingly" supplied. As with the term "unsafe", it would need to be clarified what would constitute "knowingly" for the purposes of the provision. We would argue that any supplier who knowingly makes faulty products available to consumers should receive a higher penalty than one who does so "unknowingly". The clarification of what constitutes "knowledge" is another issues that would need clarification in order for such a provision to be effective and enforceable.

➤ OTHER LEGISLATIVE INTERVENTION

Electrical Equipment Safety System

The Electrical Equipment Safety System (EESS) is an existing legislative measure that is a proactive strategy to prevent the influx of faulty electrical goods coming into Australia and being sold to consumers.

The EESS is an initiative of the Electrical Regulatory Authorities Council (ERAC). The EESS creates nationally harmonised electrical equipment safety requirements, with prescribed “in-scope electrical equipment needing to possess certification of electrical safety, when these goods are imported by a responsible supplier. In-scope electrical equipment generally includes low voltage equipment rated 50 Vac to 1000 Vac and designed or marketed for household or personal use.

A publicly searchable national database of electrical equipment is available with all in-scope equipment marked with a single compliance mark.

The EESS is an important legislative measure to prevent unsafe electrical products being sold to consumers. Unfortunately, as consumers do not fall into the category of a “responsible supplier”, electrical items purchased directly by consumers through an overseas supplier are not subject to the requirements of the EESS. With the ready availability of electrical articles for consumers online there is a clear gap in product safety measures for this growing market. Nonetheless, the EESS is an example of a legislative measure targeted at preventing unsafe products being imported into Australia which could be a model for the consumer product safety regime.

GST and product safety

In a recent submission to the Federal Government regarding the application of GST to low value consumer goods, we raised the point that if the government seeks to obtain additional tax funds from consumers through low value imported goods, it places a stronger obligation on government to ensure these goods meet the relevant product safety standards. We proposed in our submission that the education and enforcement program that will be necessary regarding the extension of GST laws should also apply to Australian product safety requirements.

We acknowledged that these such changes would, of course, require a degree of cooperation between the Australian Taxation Office and Electrical Safety Regulators. However, this kind of preventative measure would go a long way towards curbing the influx of dangerous electrical equipment into Australia, preventing injuries and ultimately saving lives.

➤ PENALTIES AND REMEDIES

Our only general recommendation on the enforcement regime for the ACL is that it be self-funded through the imposition of mandatory, non-discretionary financial penalties for companies that supply faulty goods. This would be applied to all companies that have supplied these goods to a consumer. As discussed above, these penalties and/or fines could be scalable with those suppliers knowingly selling faulty products to receive higher penalties than those that do so unknowingly. Until a more stringent product safety regime is implemented in Australia to prevent unsafe goods being imported into the country, mandatory financial penalties are the much needed incentive for suppliers to take greater precautions before selling products to consumers.

MEA appreciates the opportunity to further contribute to the discussion on the Australian Consumer Law and are optimistic that our recommendations will be considered.

Regards,



Malcolm Richards
CEO

