

ACT Budget 2018/19: NECA's pre-budget submission



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About NECA

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry, which employs more than 145,000 workers and delivers an annual turnover in excess of \$23 billion. We represent close to 5,000 electrical contracting businesses across Australia.

NECA represents the electrical and communications contracting industry across all states and territories. We aim to help our members and the wider industry to operate and manage their business more effectively and efficiently whilst representing their interests to Federal and State Governments, regulators and principle industry bodies such as the Canberra Business Chamber, Australian Chamber of Commerce and Industry (ACCI) and Standards Australia.

Additionally, NECA maintains responsibility for the employment, training and skilling of more than 4,000 current and future electricians and contractors through our Group Training and Registered Training Organisations.

Foreword

This submission highlights the main issues that NECA considers that the ACT Government should address in formulating the 2018/19 Budget.

We believe that in the forthcoming Budget, the ACT Government can and should take concrete action to lift the burden on the electrical contracting sector, including in respect of:

- Addressing the significant dangers posed by non-conforming products;
- Providing support for NECA's "Wiring Rules Roadshow";
- Improving vocational education and training in the ACT;
- School and entry requirements;
- Taxation;
- Facilitating energy efficiency and safety;
- Building regulation reforms; and
- The creation of a contestable works market in the ACT.

These measures will also greatly assist in relation to the ACT government's provision of infrastructure.

We thank the ACT Government for the opportunity to participate in this consultation as part of the 2018/19 Budget process.

Should you wish to discuss further, I can be contacted on ph: 02 9439 8523 or email: suresh.manickam@neca.asn.au

Yours faithfully



Suresh Manickam

**Chief Executive Officer
National Electrical and Communications Association (NECA)**

Non-conforming products

NECA strongly calls for action to assist in the stamping out of non-compliant electrical parts and product sales in the ACT that fail to meet Australian Standards.

The professional reputation of our industry is compromised through the weakening of safety standards, property damage and the potential endangerment of human life when non-compliant products remain on sale.

Recent building fire disasters, such as the Grenfell Tower tragedy in London, demonstrate the dangers associated with the use of non-compliant products.

Despite this, there have been extensive delays in developing and implementing policies to address the use of non-compliant products in the building industry in Australia.

NECA therefore calls upon the ACT Government to increase its commitment and resources to ensure a larger number of product random batch tests are carried out. This action would assist with the delivery of higher quality electrical products for consumers.

This aligns with the findings of the *Interim report: external cladding materials* of the Australian Senate's Inquiry into non-conforming building products, which recommended that the Federal Safety Commissioner should be adequately resourced to carry out audits of compliance with the National Construction Code performance requirements in relation to building materials.

Dangers of non-conforming products

The trade in counterfeit and non-conforming products poses a clear threat to the viability of Australia's electrical contracting sector. This threat manifests itself as follows:

- The risk of electrical fire and shocks;

- The potential of death or serious injury to installers and the public;
- Property damage and rectification;
- Legal liability issues;
- Expenses relating to the provision of replacement products;
- Insufficient insurance products and resultant premium increases;
- Industry brand and / or reputational damage;
- Cost to businesses operating with the supply chain of the electrical sector; and
- Consumer confidence.

Examples of recent product failures

Recent electrical product failures such as Infinity, Olsent Cables and E-Cables, coupled with the tragic death of a woman on the New South Wales Central Coast in 2014 following electrocution from a non-compliant USB charger, have amplified our concerns.

Does it Comply? Campaign

In 2013, NECA in conjunction with Voltimum, one of the world's leading electrical industry information portal and Standards Australia, developed and instigated the [Does it Comply?](#) Campaign. This campaign focuses on the removal of unsafe and non-compliant products across the electrical sector. As part of the campaign, NECA and Voltimum conducted an industry survey to gain an understanding of the seriousness of the issue of non-compliant product and attitudes across the industry towards this problem. The survey results indicated that over 75 per cent of respondents had seen the installation or sale of non-conforming electrical product in the Australian market.

[Does it Comply?](#) enabled the creation of the Electrical Industry Charter, an alliance of major industry partners who are committed to selling and using only genuine and compliant products.

Given the size and significance of the building and construction sector in the ACT and around Australia, it is critical that safeguards are in place to ensure that damages do not flow to industry or consumers as a result of non-complaint building products.

Costs associated with product failures

The recall of Infinity and Olsent branded electrical cables installed in houses and buildings across Australia between 2010 and 2013 was initially expected to cost around \$80 million. However, more recently released estimates from the ACCC have revised this figure to approximately \$100 million. According to the ACCC 20,000 properties are said to have been installed with Infinity and Olsent branded cables.¹

Australian Senate Economics References Committee inquiry into non-conforming building products

Due to the dangers above, NECA joined with a range of leading building and construction industry peak bodies to call for more government funding and enforcement in relation to non-compliant building products, as part of the current Australian Senate Economics References Committee inquiry into non-conforming building products.

This inquiry is now due to release its final report by 30 April 2018. An interim report on asbestos is due to be released by 31 October 2017, with the interim report on aluminium cladding having been released on 6 September 2017.

We are therefore supportive of the interim report's recommendation that the Federal Safety Commissioner should be adequately resourced to carry out audits of compliance with the National Construction Code performance requirements in relation to building materials.

¹ John Rolfe, Infinity cable recall too slow, ACCC fears only fires will stir consumers into action, *Daily Telegraph*, 26 March 2015: <http://www.dailytelegraph.com.au/news/opinion/infinity-cable-recall-too-slow-accc-fears-only-fires-will-stir-consumers-into-action/story-fnlrw4is-1227278718234>

NECA also urges that the Commonwealth and state and territory governments expedite progress on mandatory third party certification of building products and an improved product testing regime.

The ACT Government could play a valuable role in this regard, given the relative significance of Commonwealth public buildings in Canberra.

Additionally, NECA advocates that the ACT government consider recognising the EESS (Electrical Equipment Safety System) database, which is designed to combat the use of non-compliant electrical products.

Although EESS is designed to be a nationally operated scheme, it is currently only recognised in the Queensland, Tasmania and Western Australia.

NECA also advocates that Access Canberra should regularly and vigorously undertake random product auditing as well as non-compliant product enforcement.

NECA therefore calls upon the ACT Government in the 2018/19 Budget to increase its commitment and resources to:

- **Ensure that an improved regime for the auditing of electrical products to verify their authenticity is in place in the ACT;**
- **Expedite progress on mandatory third party certification of building products and an improved product testing regime through fora such as the Building Minister's Forum;**
- **Expedite uniform/harmonised laws in respect of Point of Sale via the COAG process;**
- **Commit more funding in relation to random product auditing; and**
- **Consider recognising the EESS (Electrical Equipment Safety System) database.**

Support for NECA's "Wiring Rules Roadshow"

NECA advocates that the ACT government makes provision in the 2018/19 Budget for assistance in publicising NECA's "Wiring Rules Roadshow" event in Canberra.

The Wiring Rules Roadshow is a series of free seminars for electricians on the forthcoming revised AS/NZS 3000 Wiring Rules Standard.

The AS/NZS 3000 Wiring Rules Standard

The AS/NZS 3000 Wiring Rules Standard sets out requirements for the design, construction and verification of all electrical installations across Australia. Its rationale is to protect persons, livestock, and property from electric shock, fire and physical injury hazards.

It is thus vital that electricians in the ACT are aware of their obligations in relation to the revised AS/NZS 3000 Wiring Rules Standard.

A revised AS/NZS 3000 Wiring Rules Standard will be released in 2018, replacing the current iteration of the Standard which was introduced in 2007.

Significant changes are anticipated to be incorporated in the revised AS/NZS 3000 Wiring Rules Standard, including:

- A mandatory requirement to consult with the owner on special requirements if the electricity supply is removed by extended fault or severe weather/climatic conditions;
- An increased mandatory requirement for the use of RCD protection on all final sub-circuits of all types of installations;
- Recommendations regarding the installation of arc fault detection devices; and
- New light fittings installation methods.

Additionally, our industry is undergoing rapid technological change, including with respect to solar and home battery energy storage systems and the “internet of things” – connecting devices, vehicles and buildings.

It is therefore essential that the latest safety practices are quickly adopted by industry participants.

Wiring Rules Roadshow

To this end, NECA’s Wiring Rules Roadshow, comprising a series of free seminars to disseminate information to electricians on the forthcoming revised AS/NZS 3000 Wiring Rules Standard, will be held in Autumn 2018.

In 2008, NECA held a similar series of seminars across NSW and in Canberra in relation to the current iteration of the Wiring Rules Standard, which was then being introduced. These seminars received positive feedback and were well attended.

NECA intends to again hold an event in Canberra as part of the Wiring Rules Roadshow, as was the case in 2008.

The seminars would be open to all electricians, irrespective of whether or not they are members of NECA.

Additionally, at the seminars we are happy to provide attendees with any other information that Access Canberra might wish to communicate to the sector.

Assistance requested

NECA therefore advocates that the ACT government provide assistance to NECA in the form of publicising the Canberra leg of the Wiring Rules Roadshow, for example via emailing electricians, the Access Canberra website, social media and any other means of communication deemed appropriate.

Additionally, it would be beneficial if we could use the Access Canberra logo on publicity material for the Wiring Rules Roadshow – obviously we would provide the ACT government with an opportunity to approve any documents so marked prior to public distribution.

Costs involved in holding the Wiring Rules Roadshow

The costs of staging the Wiring Rules Roadshow are relatively significant as they involve two NECA employees travelling around NSW and the ACT for approximately two months, thereby incurring costs such as accommodation and fuel. Their usual responsibilities also have to be allocated amongst other members of staff.

Assistance in publicising the Canberra event will not only help reduce the financial burden on NECA but also ensure that information relating to the updated AS/NZS 3000 Wiring Rules Standard reaches the target audience.

Ultimately, it is the entire electrical trade and the consumers who will benefit from these seminars, given the safety implications involved.

Vocational Education and Training

Industry skills sets

The ACT Government in the 2018/19 Budget should allocate funds for the training of industry supported 'skill sets', particularly at post-trade levels. This responds to the overall drop-off in formal training undertaken by workers in the industry and their preference for shorter training times.

NECA's employee survey shows that many post-apprentices spend less than one hour a month on training and professional development at their own initiative. Consideration should be given to a core set of competencies that reflect environmental requirements for the industry and consumers.

Electro-technology is undergoing significant change, making it essential that we ensure that apprentices are endowed with the requisite skills, and that existing workers have the opportunity to re-skill.

Already, electric car manufacturer Tesla has rolled out charging stations in Australia, including charging stations in Goulbourn and Wodonga, the first stations outside of Sydney and Melbourne.

Electric vehicles (EVs) reduce dependence on petroleum and tap into a source of electricity that is often domestic and relatively inexpensive. Equally significant, EVs have the potential to unlock innovation and create new advanced industries that spur job growth and enhance economic prosperity.

In the long-term, EVs will be important in de-carbonising the transport sector.

The uptake of EVs and the resulting need for charging stations is anticipated to rise exponentially, driven by factors such as:

- Falling battery costs;

- More efficient vehicles with greater range, for example the Tesla Model S has a range in excess of 500 km; and
- Government purchasing in respect of fleet acquisitions.

According to Navigant Research, the global light duty EV market is expected to grow significantly, from 2.7 million vehicle sales in 2014 to 6.4 million in 2023, or 2.4 per cent of total worldwide light-duty vehicle sales by 2023, under a base scenario.²

Plug-in versions of Audi (A4), Mercedes (C-class) and BMW (3 series) models are being developed by these manufacturers for release over the next few years.³

Similarly, electrical workers must develop skills and keep abreast of developments in respect of:

- Smart meters – with the roll-out of smart meters commencing in the ACT from 1 December 2017;
- Solar rooftop and battery systems for household use; and
- Anticipated future advances in relation to smart grids, enabling consumers' devices to trade electricity based on their preferences with other devices connected to a network.

NECA is currently piloting the development of a course to be mapped to the '*Develop Strategies to address Sustainability for Electrical Installations*' Skills Set with appropriate support materials developed targeting apprentices and immediate graduating apprentices. The course will be delivered in a variety of ways as standalone units that will involve a national trial across a range of sites with a comprehensive examination of materials, course structure and requirements.

We would be happy to provide the ACT government with information on this course and its implementation.

² Navigant Research, *Electric Vehicle Market Forecasts, Global Forecasts for Light Duty Hybrid, Plug-In Hybrid, and Battery Electric Vehicle Sales and Vehicles in Use: 2014-2023*, 2014

³ Michael Taylor, Car & Driver, *2016 BMW 328e Plug-In Hybrid*, January 2015

The ACT Government in the 2018/19 Budget should allocate funds for the training of industry supported ‘skill sets’, particularly at post-trade levels.

Mentoring of apprentices

NECA Training’s high completion rates at over 80 per cent (against an industry level of 50 to 60 per cent) demonstrate the merits of the mentoring of apprentices.

Mentoring allows the proactive management of the individual apprentice’s development, including in respect of:

- OH&S awareness and compliance;
- Profiling monitoring;
- Managing personal issues and discipline where necessary;
- Work exposure;
- Review PPE (personal protective equipment);
- Review toolkits; and
- Monitor and discuss trade school work.

According to a Deloitte study commissioned by the NSW Board of Vocational Education and Training, the cost of non-completions in NSW for 2010 alone was \$348 million. The Deloitte study also estimated that the cost to the NSW government of non-completion amounted to \$4,100 per apprentice per annum. This did not include costs to the Commonwealth government, to employers and to the broader economy in terms of lost productivity and other multiplier effects⁴.

This implies that there is significant scope to save the ACT government valuable training funds by raising overall completion rates through measures including the mentoring of apprentices.

⁴ Deloitte Access Economics, commissioned by the NSW Board of Vocational Education and Training, *The cost of apprenticeship non-completion in NSW*, 25 August 2011

This might include mentoring for female apprentices in the industry. NECA has been conducting research on female participation in the electrical contracting sector and we would be happy to provide the ACT government with an update on this.

The ACT Government in the 2018/19 Budget should allocate funds for the mentoring of electro-technology apprentices in order to help ensure high quality completion rates of apprentices.

NECA recommends that the ACT Government works with industry to provide additional RTO capacity for electrotech students for the ACT.

School and entry requirements

School-based apprenticeships are important pathways for students and are a good source of apprenticeship applications for the industry and provide a way to screen potential applicants.

Some of these courses, however, are too institutionally-based and do not always lead to good vocational outcomes.

NECA therefore considers that there is a need to reform the approach to pre-apprenticeships.

They should be encouraged where they meet employer and student needs, particularly where there is flexible timetabling. In some cases, it may be sufficient to use this option for Year 11 students to bridge the gap in academic learning required in off-the-job training. Employers have only limited understanding of this option and its ability to supplement labour when off-the-job training is being undertaken by full-time apprentices. Attainment of acceptable minimum mathematics skills (at least to sound Year 10 level) is an on-going problem with young applicants.

In the 2018/19 Budget, the ACT Government should therefore allocate funding for:

- **Flexible timetabling for pre-apprenticeships; and**
- **The development of practical maths lessons in schools for trade-training aspirants, with involvement of relevant partners in the education systems (including the Australian Association of Maths Teachers).**
- **Additional funding for the provision of further information and education in relation to the trades for school students.**

Taxation

Incentives for apprentices

The ACT Government should consider introducing tax incentives for employers to take on apprentices, particularly for small contractors who form the basis of the electrical industry.

In particular, mature age apprentices are very productive within the workforce and bring enhanced knowledge, maturity, wisdom and experience to businesses within the electrical sector. However from an employer perspective, mature age apprentices are often priced out of the marketplace given the cost of hire.

NECA therefore advocates that the ACT Government provides an employer wage subsidy to employers who choose to employ mature age/adult apprentices. This subsidy should match the differential between the hourly rate of a junior apprentice and adult apprentice across each stage year of the apprenticeship, helping to promote reskilling and cross skilling to take greater advantage of the benefits that mature workers could offer industry.

Tax mix

Payroll tax is essentially a tax on the employing of Australians and a disincentive to grow small and medium enterprises. Each state and territory maintains separate tax and threshold limits creating further confusion and complexity for national businesses.

Given that the ACT Government's objective is to replace inefficient taxes with a land-based tax, consideration should be given to leveraging this reform to reduce the level of payroll tax. This would provide the ACT with a considerable competitive advantage.

In the 2018/19 Budget, the ACT Government should:

- **Consider introducing tax incentives for employers to take on apprentices;**

- **Provide an employer wage subsidy to employers who choose to employ mature age/adult apprentices; and**
- **Reduce payroll tax.**

Wiring safety audits

NECA proposes that a mandatory Safety Audit should occur at the point of sale or any new rental arrangement. The transfer of title would not occur until a proof of Audit was produced to Access Canberra. This would be a quick and inexpensive proposition that provides the consumer with a list of safety issues, remedies and costs, thereby enabling budgeting for the cost of repairs in an appropriate manner.

Following each inspection, a report would be provided to the installation owner that categorises the risks into predetermined categories that would allow for the risks to be managed on a priority basis. Additionally, an inspector who becomes aware of situations that pose an immediate risk would need to take appropriate action to mitigate such risk prior to formal notification.

Technical Scope

The scope of the audit is intended to include an assessment of the installation as follows.

Visual Inspection

A visual inspection would be conducted on the entire electrical installation including:

- Accessible roof spaces,
- Accessible underfloor areas
- All rooms and spaces serviced by the same electricity supply.

With the intention of determining the status of the following:

1. Basic protection, protection against direct contact with live parts.
2. Fault protection, protection against indirect contact with exposed conductive parts.
3. Protection against hazardous parts, e.g. enclosure, guarding or screening of flammable materials, hot surfaces and parts that may cause physical injury.
4. Protection against spread of fire, e.g. penetration of fire barriers and resealing of penetrations in switchboards.
5. General condition of the electrical equipment, e.g. signs of damage that could impair safe operation.

6. Consumer mains:
 - a. Current-carrying capacity.
 - b. Protection against external influences.
7. Switchboards:
 - a. Location, e.g. access and egress.
 - b. Protective devices
 - c. Isolating devices, e.g. main switches.
 - d. Connecting devices, e.g. neutral bars, earth bars and active links.
 - e. Connection and fixing of wiring and switchgear.
 - f. Identification and labelling of electrical equipment.
 - g. Protection against external influences.
8. Wiring systems:
 - a. Conductor size, e.g. current-carrying capacity and voltage drop.
 - b. Adequate support and fixing.
 - c. Connections and enclosures.
 - d. Particular installation conditions,
 - e. Segregation from other services and electrical installations.
 - f. Protection against external influences, e.g. enclosure.
9. Electrical equipment:
 - a. Isolation and switching devices for protection against injury from mechanical movement devices and motors.
 - b. Isolation and switching devices for protection against thermal effects, e.g. motors, room heaters, water heaters.
 - c. Switching devices for particular electrical equipment, water heaters etc.
 - d. Connection, support and fixing.
 - e. Protection against external influences including ingress of moisture where required by any clause.
 - f. Suitability for intended voltage, current and frequency.
10. Earthing:
 - a. MEN connection.
 - b. Earth electrode.
 - c. Earthing conductors, e.g. size, identification.
 - d. Equipotential bonding conductors, e.g. size, identification.
 - e. Connections, joints and terminations.
 - f. Protection against external influences.

Testing

1. Continuity of the earthing system,
 - a. Earth resistance of the main earthing conductor,
 - b. Protective earthing conductors,
 - c. PEN conductors, and
 - d. Bonding conductors
2. Polarity,
 - a. Socket Outlets
 - b. Consumer Mains
3. Verification of impedance required for automatic disconnection of supply, and
4. Correct operation of RCDs.

Smoke Alarms

1. Location,
2. Type,
3. Interconnection,
4. Expiry date,
5. Recalls.

Home energy audits

Additionally, NECA proposes that the ACT Government encourage property owners to undertake voluntary Home Energy Audits. Home Energy Audits should occur at the point of sale or any new rental arrangement. Given the current landscape in respect of energy costs, such a proposition would be both quick and inexpensive and would provide the consumer with options as to how best a consumer may plan to reduce their energy bill and carbon footprint.

In the 2018/19 Budget, the ACT Government should:

- **Introduce mandatory Safety Audits; and**
- **Encourage property owners to undertake voluntary Home Energy Audits.**

Building regulation reforms

NECA is appreciative of the ACT Government's efforts in respect of building regulation reform stemming from the Improving the ACT Building Regulatory System Review.

Going forward, we believe that the following should be prioritised as the ACT Building Regulatory System Review moves to fruition and to enhance the building regulatory system in the ACT generally.

Automatic Mutual Recognition

From December 2014, electricians from Queensland, Victoria and New South Wales can perform electrical work interstate with their home state licence under the Automatic Mutual Recognition (AMR) scheme, helping to streamline business arrangements for electrical contractors.

Unfortunately, the ACT has not agreed to enter this mutual arrangement. Electricians or contractors wishing to perform electrical work in the ACT must obtain an electrical licence issued within the ACT jurisdiction. Section 35 of the Construction Occupations (Licensing) Regulation 2004 allows certain occupation workers to perform work unlicensed in the ACT, however, this does not include electricians.

However, the ACT does allow a person licensed in an occupation in a state or territory to apply for mutual recognition of their licence in another state or territory, where the occupation applied for is substantially the same. For electricians, this will allow for individual use but not by corporations or partnerships and apply to just one interstate licence of the person's choosing.

Given the proximity of the ACT to NSW, AMR is critical for both individual and contract licensees as it provides greater skills mobility at reduced costs. NECA advocates that such a policy is beneficial for the licensees, consumers and government.

NECA therefore advocates that the ACT should adopt the approach of Queensland, New South Wales and Victoria in respect of mutual recognition and the electrical sector. However, this must not dilute safety standards and technical expertise.

Retention Trust Money Account legislation

Retention money is money retained out of money payable by a head contractor to a sub-contractor as security for the performance of obligations of the sub-contractor under the sub-contract.

Retention trusts are designed to safeguard sub-contractors from the loss of this money in cases where the head contractor experiences financial difficulties.

NECA is strongly supportive of a requirement that retention trusts be established in order to provide protection to sub-contractors owed payments.

Our preferred option is that trust funds should be established by head contractors.

This has the advantage of protecting sub-contractors in the event of insolvency.

Additionally, another advantage is that this option minimises the risk of contractors using the funds for purposes other than paying sub-contractors. NECA members have reported that this is a significant issue, with head contractors in some cases using funds earmarked for sub-contractors for speculation in the short-term money market.

NECA supports the introduction of mandatory retention trusts in order to provide protection to sub-contractors owed payments.

Legislation introducing a low cost, Retention Money Trust Account scheme should be established across all state and territory jurisdictions, including the ACT, similar to those available in the real estate industry and legal profession. The scheme should

be administered by a Government department to reduce cost burdens and create a level playing field for industry.

Threshold for retention trust scheme

The New South Wales government has amended the Building and Construction Industry *Security of Payment Act 1999 (NSW)* such that head contractors must now establish trust accounts to hold retention money under subcontracts for projects with a value of at least \$20 million. This regulation came into effect on May 1st 2015 and affects contracts entered into after this time.

NECA NSW had however argued for a significantly lower threshold of \$1 million, as this would provide SME electrical contractors with much greater protection. This is appropriate given the fact that the majority of businesses in the industry are in fact SMEs.

According to Australian Bureau of Statistics data, small businesses (0–19 employees) employ a clear majority of persons in the building and construction sector in Australia (62 per cent), followed by medium size businesses (20–199 employees) with 19 per cent and large size businesses (200 or more employees) with 19 per cent.

This lower threshold of \$1 million is particularly appropriate for the ACT, given the smaller average size of construction projects in the ACT compared to NSW.

NECA advocates that the threshold for the retention trust scheme should be set for construction industry project work to a value of \$1 million.

Administration of the retention trust scheme

In our view, this should be administered by the ACT government, in order to reduce the administrative burden on business as well as create a known and level playing field via a consistent and transparent approach. The interest earned by the investment of the funds held in trust could be used to recoup the costs of the scheme.

NECA advocates that the retention trust scheme should be administered by the ACT Government, with the interest earned by the investment of the funds held in trust could be used to recoup the costs of the scheme.

Automatic return of retention money to sub-contractors

NECA advocates that, at the end of the 12 months defect liability period, the head contractor should automatically return the money to the sub-contractor. This would free sub-contractors from having to make an application to have the retention returned.

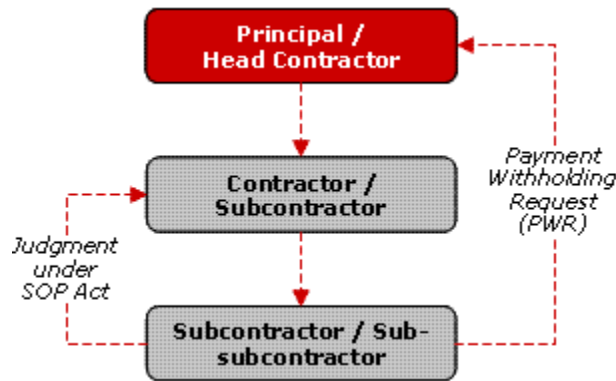
NECA advocates that, at the end of the 12 months defect liability period, the head contractor should automatically return the money to the sub-contractor. This would free sub-contractors from having to make an application to have the retention returned.

Payment Withholding Requests

In New South Wales, changes to the Security of Payment Legislation in 2012 now allow sub-contractors to serve a payment withholding request (PWR) on a principal at the same time it serves an adjudication application on the respondent/contractor.

Upon receiving a PWR, the principal must withhold from any amount payable or that becomes payable to the respondent/contractor which includes an amount in respect of the work done/services provided by a claimant/sub-contractor, an amount commensurate to that claimed by the claimant/sub-contractor. If the principal fails to comply with this request, it will become jointly and severally liable with the respondent/contractor for the amount owed to the claimant/sub-contractor.

The amendments are designed to work anywhere up and down the contractual chain, and therefore the obligations on a contractor would vary depending upon where that contractor sits in relation to the party entitled to issue the PWR. The basic contractual chain is illustrated in the diagram below.



A PWR must be served by a claimant/sub-contractor who has made an adjudication application for a payment claim and include a written statement by the claimant in the form of a statutory declaration that it genuinely believes that the amount of money claimed is owed to the claimant by the respondent. Upon receipt of a PWR, the Principal Contractor must retain out of money that is or becomes payable:

- The money owed downstream to its immediate subcontractor (which is the respondent in the adjudication), the amount of money to which the payment claim relates; or
- If the amount of money owed by the Principal Contractor is less than the amount to which the claim relates, retain that amount.

Payment Withholding Request legislation – that allows the Principal/Head Contractor to be more easily served with a claim for payment – should be adopted in the ACT and across all other states and territories.

Security of payment – progress payment claims

Electrical contractors are often the last in the credit line to receive payment for work completed, in the event of a construction firm facing financial difficulties. Worse still, in cases where the company falls into receivership, electrical contractors often do not receive payment at all.

Of critical concern to NECA is that the majority of electrical contractors are SMEs – small family owned and run businesses.

Further, it is arguably the case that of all sub-contractors, electrical contractors provide the highest value inputs by way of fixtures, fittings and labour – therefore making electrical contractors the most vulnerable with respect to payments in the event of receivership. In other words, electrical contractors are at a greater disadvantage than any other sub-contractor.

NECA therefore strongly advocates that a maximum time period for payment of a progress claim should be legislated at 14 calendar days. If the ACT government considers that this 14 day timeframe is too short, then certainly no more than 28 calendar days should be legislated. This latter timeframe is as per the recommendations of the Inquiry into Construction Industry Insolvency in NSW ('Collins Inquiry').

NECA strongly advocates that a maximum time period for payment of a progress claim should be legislated at 14 calendar days.

Project bank accounts

NECA advocates that the Environment and Planning Directorate considers the merits of project bank accounts (PBAs) for selected government sector construction contracts in the ACT.

PBAs have the potential to complement security of payment laws.

The use of PBAs for contract payments was trialled on selected government sector construction contracts in NSW.

A PBA is a bank account opened and maintained by the head contractor, into which the principal deposits contract payments. Simultaneous payments are then made from the PBA to the head contractor and sub-contractors (including suppliers and consultants). The difference between a PBA and a 'normal' bank account is that a PBA has trust status established through a Trust Deed.

Due to its trust status and the simultaneous payment of moneys to the head contractor and sub-contractors, the PBA offers a higher level of protection for sub-contract payments than traditional payment mechanisms.

The purpose of the PBA arrangement is to ensure, as far as possible, that money paid to the head contractor for work undertaken by sub-contractors is passed on promptly. The trust status of the PBA prevents money paid to the head contractor from being used for other purposes or, in the case of a head contractor's insolvency, being available to an administrator or liquidator.

In the NSW trial, consistent with the *Building and Construction Industry Security of Payment Act 1999*, the principal has 15 business days to pay against a valid payment claim from the head contractor. Funds must therefore be released from the PBA within 15 business days after the payment claim is served. The bank must receive the signed authorisation in time to comply with this requirement.

A trial in the ACT could be informed by the NSW trial. Alternatively, the ACT government could maintain a watching brief on the results of the NSW trial once it has been completed and then make a decision on whether or not to introduce PBAs in the ACT.

NECA advocates that the ACT government considers the introduction of project bank accounts for government construction contracts in the ACT, in light of the results of the NSW trial, or alternatively conducts its own trial of PBAs.

Alternative dispute resolution

NECA advocates that the ACT government ensure that any alternative dispute resolution mechanisms established for residential building in the ACT are quick and cost-effective.

Our primary concern is that payment to sub-contractors is not delayed unnecessarily.

To this end, NECA believes that the Tasmanian model might be considered in relation to domestic adjudication.

Under the *Building and Construction Industry Security of Payment Act 2009* (TAS), residential home owners have 20 business days (compared to 10 business days for other debtors) to respond to payment claims.

Additionally, *Tasmania's Residential Building Work Contracts and Dispute Resolution Act 2016* created a new process for mediation through which builders and consumers are encouraged to negotiate in respect of disputes and to settle on an arrangement.

Under the new process, either a builder or property owner are able to lodge a dispute with the Director of Building Control, who then encourages the parties to negotiate and settle and who may appoint one or more people to a mediation panel to assist the parties in reaching an agreement.

The parties have 6 weeks in which to resolve the dispute through mediation, after which time they must turn to other avenues of dispute resolution, such as through a more formal process of adjudication.

The mediation process is free of charge and entirely voluntary, meaning that neither party will be forced into the process.

This latter point is crucial – it is critically important that the right to use Security of Payments laws is not abrogated or delayed.

Consumers also have a right to serve a new “work completion claim” on the contractor which requires the builder to complete the works as specified in the contract, and will have the option to lodge an adjudication for application with the Director of Building Control where the builder does not complete the work within the required time frame.

NECA advocates that the ACT government ensure that any alternative dispute resolution mechanisms established for residential building in the ACT are quick and cost-effective.

Introduction of a contestable works scheme

NECA advocates that Access Canberra be resourced in order to create a contestable works market for electrical connections in the ACT, as exists in NSW.

This would provide benefits for consumers in the ACT through introducing competition for this work which should reduce delays in connecting to the electricity network and also costs.

Access Canberra could take responsibility for the licensing of accredited service providers (ASP) in a harmonised regime with NSW. Mutual recognition for ASPs in NSW and the ACT should be set in place from the outset.

Additionally, over time contestability could be extended to the following areas:

- Asset relocations;
- Tiger tails;
- Asset access;
- Transmission spotting;
- Transmission inspections;
- Network cable jointing; and
- Street lighting.

Summary

Non-conforming products

In the 2018/19 Budget, the ACT Government should:

- Ensure a larger number of product random batch tests are carried out;
- Ensure that a greater number of audits are carried out in relation to sellers of electrical products to verify their authenticity; and
- Ensure that there is great enforcement surrounding the sale and distribution of non-compliant building products.

Support for NECA's "Wiring Rules Roadshow"

In the 2018/19 Budget, the ACT Government should:

- Provide assistance to NECA in the form of publicising the Canberra leg of the Wiring Rules Roadshow.

Vocational Education and Training

In the 2018/19 Budget, the ACT Government should:

- Allocate funds for the training of industry supported 'skill sets', particularly at post-trade levels; and
- Allocate funds for the mentoring of electro-technology apprentices in order to ensure high quality completion rates of apprentices.

School and entry requirements

In the 2018/19 Budget, the ACT Government should:

- Allocate funding for flexible timetabling for pre-apprenticeships; and
- Allocate funding for the development of practical maths lessons in schools for trade-training aspirants, with involvement of relevant partners in the education systems (including the Australian Association of Maths Teachers).

Taxation

In the 2018/19 Budget, the ACT Government should:

- Consider introducing tax incentives for employers to take on apprentices;
- Provide an employer wage subsidy to employers who choose to employ mature age/adult apprentices; and
- Reduce payroll tax.

Enhancing energy efficiency and safety

In the 2018/19 Budget, the ACT Government should:

- Introduce mandatory Safety Audits; and
- Encourage property owners to undertake voluntary Home Energy Audits.

Building regulation reforms

In the 2018/19 Budget, the ACT Government should allocate resources in order to:

- Adopt the approach of Queensland, New South Wales and Victoria in respect of mutual recognition of licenses. However, this must not dilute safety standards and technical expertise;
- Introduce mandatory retention trusts in order to provide protection to sub-contractors owed payments. The threshold for the retention trust scheme should be set for construction industry project work to a value of \$1 million;
- Adopt Payment Withholding Request legislation that allows the Principal/Head Contractor to be more easily served with a claim for payment;
- Legislate that a maximum time period for payment of a progress claim be set at 14 days;
- Consider the introduction of project bank accounts for government construction contracts in the ACT, in light of the results of the NSW trial, or alternatively conducts its own trial of PBAs; and
- Ensure that any alternative dispute resolution mechanisms established for residential building in the ACT are quick and cost-effective.

Creation of a market for contestable works

In the 2018/19 Budget, the ACT Government should allocate resources in order to:

- Create a contestable works market for electrical connections in the ACT.