

National Electrical and Communications Association

Submission:

Building Stronger Foundations Discussion Paper (June 2019)



NECA NSW Chapter



Foreword

National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contractors. NECA represents more than 5,400 electrical contracting businesses across all Australian States and Territories. Our sector employs upwards of 165,000 workers and maintains an annual turnover in excess of \$23 billion. NECA is also responsible for the employment, training and skilling of more than 4,800 current and future electricians and contractors through our various training and educational programs.

Our members make an integral contribution to the New South Wales economy – connecting homes, businesses and infrastructure across the State, encouraging investment, improving reliability and security across the energy system and delivering environmentally sustainable and affordable outcomes for the community. We view the safety and reputation of the electrotechnology industry as paramount to all those who work within the sector, as well as those customers and suppliers within the building and construction sector. We believe that all stakeholders involved in the development chain have an individual and collective responsibility and duty of care.

Key concerns for the electrotechnology industry relate to the trade in counterfeit products which fail to conform to Australian Standards and pose a significant threat to community safety and the viability of the building and construction industry. The installation of unsafe non-compliant electrical equipment can be costly for business and consumer/s and poses a risk of electrical fire, shock and property damage while increasing the potential legal liabilities for electrical contractors. This ultimately leads to devaluing industry standards and increasing reputational damage, which detrimentally impacts consumer confidence and has the potential for significant economic impacts.

NECA holds the views that governments and regulators must learn from the lessons that Infinity provided us. Moreover, NECA believes that governments and regulators have a responsibility to act upon these lessons through measured regulatory reform. NECA looks forward to working closely with the NSW Government to contribute to addressing some of the major challenges affecting the electrotechnology industry.

Non-conforming products

NECA strongly calls for action to assist in the stamping out of non-compliant electrical parts and product sales in NSW 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. We are of the view that all stakeholders involved in the development chain have an individual and collective responsibility and duty of care. To achieve this critical priority, all electrical parts and products utilised in the building and construction process should be required to meet minimum Australian Standards.

NECA calls upon the NSW 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 Federal Governments Interim Report 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.

1.1. 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.

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.

1.2. 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 focused on the removal of unsafe and non-compliant products across the electrical sector and sought to raise consumer and industry awareness of the dangers of products that fail to comply with Australian Standards.

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 NSW 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.

1.3. Electrical Equipment Safety System (EESS)

The Electrical Equipment Safety System (EESS) was established in Queensland in 2013 and is currently recognised by New Zealand, Tasmania and Western Australia. Enabling legislation is also being considered in South Australia and Victoria. The Legislation requires all responsible suppliers selling goods into participating jurisdictions to be registered on a national database. Registration must be renewed annually and an annual registration fee paid by responsible suppliers.

The national database is the key feature of the EESS. It records the registration details of responsible suppliers of electrical equipment in Australia and New Zealand. This allows electrical equipment to be easily traced to the supplier and its legal supply in Australia and New Zealand to be verified.

Concerns have been raised regarding the viability of Electrical Regulatory Authorities Council (ERAC), the manager of the EESS database. While these concerns have largely been raised by NSW Fair Trading, NECA believes that the management of the EESS database requires additional focus and resources and that a case can be made for an industry-based solution.

Although ERAC is made up of regulatory authority representatives from across Australia and New Zealand, the lack of mandatory participation from each state and territory necessitates urgent reform. We urge the NSW Government to take the lead in this space.

1.4. 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

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-accf-fears-only-fires-will-stir-consumers-into-action/story-fnlrw4is-1227278718234>

NECA holds the views that government and regulators must learn from the lessons that Infinity provided us. Moreover, NECA believes that governments and regulators have a responsibility to act upon these lessons.

1.5. Enforcement

A key concern for the electrical contracting sector is the lack of government enforcement, at all levels, of those businesses importing non-compliant products. This is further compounded by the effectiveness (or otherwise) of the current product batch-testing regime that seeks to ensure that Standards are adhered to.

It is the view of NECA and our members that governmental resource and funding should be significantly boosted:

- at the importation stage (Customs);
- as well as at the sales and distribution stage (State Fair Trading Offices or equivalent).

The opportunity exists for the NSW Government again to take a strong leadership position.

1.6. Commonwealth Government Inquiries

NECA has previously made a submission to the Joint Standing Committee on Treaties (JSCOT) Inquiry into the proposed China-Australia Free Trade Agreement (ChAFTA).

In the context of imported products NECA reiterates our comments to the JSCOT inquiry:

- 1) NECA would not be supportive of ChAFTA in the event that there was a dilution to current importation processes and laws in relation to electrical products.
- 2) NECA calls on the Federal government to broaden and boost Customs powers to enable:
 - a) Random compliance audits of imported electrical products; and
 - b) Ability to detain non-compliant electrical products.

In reference to these points above, the flow of imported electrical products that will arise from ChAFTA necessitates a boost to importation and border protection as oversighted by the Commonwealth.

NECA has also made a submission to the Senate Economics Reference Committee Inquiry into non-conforming building products, of which the results from the inquiry are yet to be finalised.

Despite these issues being operational within the Federal jurisdiction, the opportunity exists to introduce regulatory reform that will see electrical products meeting minimum Australian Standards, and encourage other jurisdictions to follow.

1.7. Security of Payments

As a finishing trade, electrical contractors are often involved in the latter stages of the building and construction cycle. Further, the electrical equipment and labour involved in modern buildings is often highly sophisticated and expensive. In the event a builder falls into receivership, electrical contractors can be at a disadvantage in terms of being recompensed when compared to all other trades who contribute to the project and have been fully recompensed at an earlier stage in the project.

This concerns NECA given the majority of electrical contractors are Small Business Enterprises (SMEs). The current system of payment security penalises sub-contractors by effectively rendering them de-facto underwriters to unscrupulous or inefficient head/principal contractors. Of all sub-contractors, electrical contractors provide the highest value inputs by way of fixtures, fittings and labour towards the latter stages of the construction cycle. In other words, electrical contractors are more disproportionately disadvantaged than any other sub-contractor. This uncertainty and risk significantly and detrimentally impacts contractors and their margins, which potentially can compromise good building outcomes.

1.8. Recommendations

We urge the NSW Government to act on our recommendations to ensure that counterfeit and non-conforming electrical products are stamped out and that confidence is restored within our sector. NECA make the following recommendations:

1. NSW Government to work together with industry to develop and execute a comprehensive strategy to ensure a stronger, balanced and more effective building regulatory system and restoring confidence across the construction sector and

protecting the reputation of the electrical and communication industry, including tackling the scourge of non-conforming products which are putting Australian lives at risk every single day

2. NECA supports the extension of the ERAC database to include mandatory declarations by suppliers as to whether they hold recall insurance to cover off these situations so that contractors can choose responsible suppliers of electrical equipment.
3. NECA believes that the management of the EESS requires additional focus and resources. We believe that this additional focus could best be delivered through an industry based solution that would provide information and access to all industry stakeholders.
4. NECA calls upon those states that have not yet enacted the EESS to do so as a matter of priority.
5. NECA strongly calls for the stamping out sales of non-compliant electrical parts and products that fail to meet Australian Standards. The professional reputation of our industry is compromised by the weakening of safety standards, potential property damage and potential endangerment of human life when noncompliant products remain on sale.
6. NECA calls upon the 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.
7. NECA calls for the harmonisation of the creditor line process across Australia so electrical contractors are not disadvantaged by the collapse of a construction company.
8. Payment Withholding Request legislation – that allows the principal/head contractor to be more easily served with a claim for payment – should be adopted across all states and territory jurisdiction
9. NECA recommends legislation introducing a low cost Retention Money Trust Account scheme, similar to those available in the real estate sector, be established across all state and territory jurisdictions. The scheme should be administered by a government department to reduce costs and burdens and create a level playing field for industry.
10. NECA advocates that NSW and other state and territory legislatures seek to implement a threshold for construction industry project work to a value of \$1 million.

