

Senate Inquiry into Non-conforming building products

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Date: 21st August 2015

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21st August 2015

Senator Sam Dastyari
Chair of the Senate Economics Reference Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Re: Senate Economics Reference Committee Inquiry into non-conforming building products

Dear Senator Dastyari,

Thank you for the opportunity to provide comment and feedback to the Senate Economics Reference Committee Inquiry into non-conforming building products, referred by the Senate on 23 June 2015.

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry that employs more than 145,000 workers with an annual turnover in excess of \$23 billion. We are a key component of the nation's economic fabric. Our 4,000 member businesses operate throughout Australia, across the building, infrastructure and commercial construction sectors.

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.

As the peak representative body for electrical contractors, we are well qualified to provide input upon this inquiry given our members background and experience. Critical to this inquiry, we believe that non-conforming products have the potential to spread well beyond the boundaries of the building and construction sector and into those other sectors that our members operate within.

Background

The trade in counterfeit and non-conforming products pose 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;
- property damage;
- legal liability issues;
- serious injury and death;
- cost to businesses operating with the supply chain of the electrical sector;
- industry reputation; and
- consumer confidence.

In 2013, NECA in conjunction with Voltimum, one of the world's leading electrical industry information portal and Standards Australia, launched the [Does it Comply?](#) campaign. This campaign focuses on the stamping out 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 and towards this problem. The survey results indicated that over 75% 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.

The [Does it Comply?](#) campaign complements the then newly established electrical equipment registration scheme, the Electrical Equipment Safety System (EESS). The EESS, which commenced in Queensland, was designed as a national registration database for in-scope electrical equipment whilst seeking to improve and harmonise safety legislation. NECA has concerns with the uptake of the EESS by individual States as well as the future management of the database that is highlighted later in this submission.

NECA views the safety and reputation of the electrical sector as paramount to all those who work within the sector as well as those customers and suppliers to the sector.

Recent 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. Further, the problem has deteriorated to such an extent that the Australian Competition and Consumer Commission (ACCC) is now actively involved with and monitoring product recalls. NECA worked collaboratively with the ACCC to deliver a recall solution. However, NECA has raised fundamental concerns relating to the vulnerability of electrical contractors and consumers as a result of this recall solution. 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. Our letter is attached at **Annexure A**.

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).

With respect to the above, NECA believes that all levels of government have a responsibility to regularly and vigorously undertake random product auditing as well as non-compliant product enforcement. **What ought to be of a concern to all governments is that there is an industry and public perception that federal and state departments do not actively or effectively communicate with each other with respect to the removal of non-conforming electrical products.**

NECA recently 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 overlooked by the Commonwealth.

Economic Impacts

With the slowdown in Australia's mining sector, the major driver of the nation's economic growth is expected to come from the building and construction sector. Currently, New South Wales and Victoria are experiencing this economic activity through infrastructure development and residential building and construction.

According to the Australian Construction Industry Forum (ACIF), total expenditure across the building and construction sector equalled \$233 billion in 2013/14 financial year¹. In the March quarter of 2015, the Australian Bureau of Statistics (ABS) reports total construction activity equalled \$48.3 billion². As a whole, building and construction activity accounts for around 7.8% of Gross Domestic Product, employing more than 9% of the total workforce.

¹ - Australian Construction Industry Forum – Market Report 2014 -

<http://www.acif.com.au/documents/item/660>

² Australian Bureau of Statistics – 8755.0 – Construction Work Done – March 2015

<http://www.abs.gov.au/ausstats/abs@.nsf/mf/8755.0>

Given the size of the building and construction sector, 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. The estimated costs of damages to the building and construction sector from non-conforming products are immense and include:

- expenses relating to the provision of replacement products;
- property damage and rectification;
- insufficient insurance products and resultant premium increases;
- industry brand and/or reputational damage;
- fire; and
- not least the potential of death or serious injury to installers and the public.

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 businesses around \$80 million. However, more recently released estimates from the ACCC have revised this figure to approximately \$100 million³. Further, approximately 20,000 properties are said to be affected with Infinity and Olsent branded cables, according to the ACCC.

These product failures have not just been limited to the Infinity and Olsent incidents. In recent times there have been a range of other examples where product failure and/or administration failure has led to regulatory intervention, these include:

- Federal Government Pink Batts Home Insulation;
- Mr Fluffy Asbestos;
- Avanco DC Isolators;
- HPM products NSW; and
- faulty USB charger causing electrocution in NSW.

Case studies of these five examples are provided at **Annexure B** in this submission.

EESS

³ ACCC revision estimates of cost of Infinity Cable Recall

<http://m.dailytelegraph.com.au/news/opinion/infinity-cable-recall-too-slow-acc-fears-fires-will-stir-consumers-into-action/story-fnlrw4is-1227278718234>

NECA supports product quality and safety initiatives such as [Does It Comply?](#). This campaign was launched to complement the establishment of the Electrical Equipment Safety System (EESS) in 2013. Whilst the EESS is designed to be a nationally operating scheme, it is currently only recognised in the states of Queensland, Tasmania and Western Australia.

The key feature of the EESS is the creation of a national database that records the registration details of responsible suppliers of electrical equipment across Australia and New Zealand. This is based upon mutually adopted legislation that would require each participating jurisdiction to be annually registered, with all suppliers placed on the register following the payment of an annual subscription fee.

The purpose of the database is to allow electrical equipment to be traced within the Australian supply chain as well as the verification of its legal supply within Australia and New Zealand. The database is managed by the Electrical Regulatory Authorities Council (ERAC), a peak body of electrical safety regulators in Australia and New Zealand.

Given concerns relating to the authenticity and accuracy of test certificates, NECA believes the database use could be extended to include the verification of test certificates to maintain an imported product's proof of compliance. Test certificates are generally accepted by importers as proof of a product's legitimacy but in certain cases, certificates have been found to be illegitimate or counterfeit. In order to enhance this process, verification could be based off a list of legitimate, accredited test labs that are subject to an audit regime based upon track record and level of risk.

NECA believes that the intent and purpose of the EESS is sound, specifically its role in combating the sale and distribution of non-compliant electrical products. However, we share the concerns of many within our sector with respect to its current viability due to the lack of uniform state and territory participation - therefore the ability of the EESS to commence and become effective is questionable. However, if Governments across the country are not inclined to mutually support the EESS database via ERAC, NECA believes that the model should shift to an industry-based solution. NECA, as the touch point of the

electrical contracting sector can assist the industry to deliver a self-regulation model, by managing the EESS database and providing access to all relevant industry stakeholders. Management of the database would require funding and legislative support from the Commonwealth.

Given the intergovernmental failure with respect to the progression and adoption of the EESS, NECA seeks Commonwealth support for the management and administration of the EESS database.

Recall Insurance

Product recall insurance covers the business costs related to recalling a product from the market as a result of certain defined triggers. These triggers could include non-compliance with regulations, Australian Standards or building code compliance. Product recalls can be involuntary when they are required by a regulatory agency or they can be initiated by the company itself upon discovery of an issue with a product – in either case they have the potential to be extremely costly for a company. Typically, it is the importer, wholesaler or distributor who is the policyholder. Should a policy be triggered, this would then provide some economic comfort/relief to both the policyholder and possibly the customer.

Whilst varying forms of product recall insurance exist within the electrical products supply chain within Australia, NECA understands that its take-up is often by the more reputable businesses within the sector. The uptake of recall insurance by those distributors/importers that arguably require it most is low. This was all too evident in the Infinity Cable case.

NECA asserts that a wider industry discussion in relation to recall insurance should occur, given the reputational damage to the industry following the actions of operators such as Infinity Cables.

Residual Current Devices

Residual Current Devices (RCDs) act as a safety switch by monitoring the flow of electricity from the main switchboard and prevent electrocution and the risk of fire by quickly cutting the electricity supply if an imbalance in the current is detected. It is now compulsory across most states and territories for two RCDs to be fitted to all newly constructed homes to protect the power and lighting circuits as part of the electrical installation.

With the increased reliance upon the use of the RCDs to prevent electrocution and fire risk, complacency may exist on the presumption that the RCD is made of sufficiently high quality. If this safety component is compromised through non-conformance, the risk of electrocution, fire or death is significantly increased.

RCDs are a critical component in home and workplace safety and we must ensure that additional resources are committed to ensuring their quality and conformance to Australian Standards.

Batch Testing and Compliance

Another concern for our sector is the lack of testing and checking of imported products to ensure their safety and conformance. Whilst random batch testing of electrical products does occur, these checks are too infrequent and fail to ensure a product's quality, measurement and adherence to Australian Standards.

In 2010 Fair Trading NSW uncovered the sale across Sydney of 311 non-compliant electrical products⁴. In 2006 a large number of imported, counterfeit HPM branded power sockets

⁴ Fair Trading NSW discovery of 311 non-compliant electrical products on sale

<http://doesitcomply.com.au/article/compliance-news/counterfeit-electrical-goods---don-t-take-the-risk>

were found⁵. These products were found to be highly unsafe and of a quality inconsistent with Australian Standards. The importer of these products was later successfully prosecuted.

The concerns of our sector are mirrored across other sectors such as glass and steel manufacturing where counterfeit products have been labelled as meeting Australian Standards, but later found to be a counterfeit product of poorer durability and safety.

NECA calls upon the Federal Government to increase its commitment and resources to ensure a larger number of product random batch tests are carried out. This action would not only assist with the delivery of higher quality electrical products, but also serve to increase product safety and restore consumer confidence.

Conclusion

The concerns that are raised within this submission represent a clear threat to the hard earned reputation of the electrical contracting sector. NECA firmly believes that all Governments across Australia at the Federal and State/Territory levels must do more to ensure that non-conforming products are removed from the building and construction sectors.

NECA recommends the following:

1. That there be greater clarity as to which level of government and/or department is responsible for the oversight and monitoring of imported electrical products.
2. That there be greater clarity as to which level of government and/or department is responsible for the sale of imported electrical products.
3. That the resources of federal and state regulatory agencies are significantly boosted in order to be more pro-active in relation to product enforcement activities.

⁵ Counterfeit HPM branded products discovered in 2006 -

<http://doesitcomply.com.au/article/compliance-news/case-study-counterfeit-products---the-hidden-danger>

4. That any product that requires a licensed electrician for installation only be sold through a trade's desk.
5. That the federal government broaden and boost Customs powers to enable random compliance audits of imported electrical products and the ability to detain non-compliant electrical products.
6. Given the intergovernmental failure with respect to the progression and adoption of the EESS, NECA seeks Commonwealth support for the management and administration of the EESS database.
7. That the EESS database is enhanced to provide stronger verification of test certificate legitimacy, linked to a list of accredited test labs that are subject to an audit regime based upon track record and the level of risk.
8. That a wider discussion in relation to product recall insurance occurs.
9. That the Federal Government increase its commitment and resources to ensure a larger number of product random batch tests are carried out.

We urge the 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.

Yours faithfully,



Suresh Manickam
Chief Executive Officer
National Electrical and Communications Association (NECA)

Appendix A – Letter on Infinity to ACCC



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21 August 2014

Mr Nigel Ridgway
Chair (Infinity Cables Industry Reference Group)
Recalls & Hazard Assessment Section, Product Safety Branch
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Mr Ridgway

Re: Infinity Cables Industry Reference Group Meeting

Further to the conference call on Thursday 14 August 2015 where you presented your recommendations regarding the above matter. I would like to formally offer a response on behalf of NECA.

It is understood why you have opted for a risk-based solution. However, NECA also believes that this approach leaves both the end-user (consumer) and our members (electrical contractors) in a more vulnerable position than was first apparent.

In the case of the potentially affected consumers, this approach will lead to perceptions that could potentially damage the reputation of our industry.

Many consumers will be asking:

1. Why is a different electrician fixing the problem?
2. Did 'my electrician' get it wrong?
3. Why isn't all the cable being replaced?
4. Could this be another Pink Batts/Insulation or asbestos issue with potentially similar consequences due to government/regulators once again not having taken advice from the industry?

NECA appreciates that your draft Q&A goes some way to addressing some of these potential perceptions however, we suggest that more thought be given to ensuring the consumer understands how this happened, why the industry is endorsing a risk-based approach to removing the faulty cable and why suppliers will make the decision as to who does the remedial work (and not the original installer).

For the record, NECA is in no way trying to win work for its members but simply believes that consumers need to understand the liabilities and responsibilities in a recall of this kind.

In the case of the electrical contractor, NECA is concerned that it will be very difficult for contractors to identify where this cable has been laid. Many smaller distributors do not indicate on their invoices what brand of cable has been supplied. As a result, we need to clarify who would pay for the time involved in the event that contractors had to go back to all potential sites to check what cable had been laid during this period. This could be an onerous task for those contractors who have used a sizeable amount of this cable.

In addition, NECA would also seek clarification that if the contractor had to carry out these inspections he/she would not be expected to identify what needed to be replaced ie not have to identify the areas close to "heat sources" or inaccessible places, but rather simply identify the locations where the cable was used and the volume of cable laid. On this basis the supplier would then determine what needed to be replaced and arrange for the replacement of the cable.

Notwithstanding NECA's two areas of concern I congratulate the ACCC for bringing this matter to a reasonably speedy conclusion. Based on last week's discussion NECA will support the proposed roll-out with the understanding that the statements and Q&A reflect our two concerns.

We look forward to your response.

Yours sincerely



Suresh Manickam
Chief Executive Officer
National Electrical and Communications Association (NECA)

- c. John Jamieson, ACCC
- c. Wes McKnight, President - NECA

Appendix B - Case Studies

Death from a non-compliant USB Charger (Product Failure)

In April 2014 a woman on the Central Coast of NSW died by electrocution from a non-compliant USB charger. The USB charger was purchased for \$4.95 from a Campsie mobile phone accessory store. The store was found to be selling faulty USB chargers made of low quality plastic that could not only melt, but contained no insulation pins or approval marks to signify compliance with Australian standards.

Under the New South Wales Electricity (Consumer Safety) Act 2004, the trader faced a maximum penalty for an individual to sell an electrical product that is prohibited is \$87,500 and/or two years imprisonment. NECA understands that no prosecution has been recorded against the Campsie trader.

Pink Batts Home Insulation Program (Administrative Failure)

The former Rudd Government's \$2.7 Billion Pink Batts, Home Insulation Program (HIP) was found by a Royal Commission in 2014 to have contributed to the deaths of four workers throughout 2009 and 2010, following exposure to electrical wiring and other installation points.

The consequence of this administrative failure was the avoidable deaths of four workers, coupled with the financial hardship that more than 200 small businesses suffered.

Mr Fluffy (Administrative & Product Failure)

For over two decades, more than a thousand homes across the ACT and NSW had their roofs lined with insulation that was a loose-fill asbestos product. Given the known dangers of loose-fill asbestos, it is the case that both the occupiers and tradesmen have been exposed to these risks.

The clean-up bill and remediation is estimated to cost up to \$5 Billion. This administrative failure has been costly for Governments and, by extension, taxpayers.

Product Recalls (Product Failure)

Avanco CD Isolators and **Infinity Cable** provide current examples of the economic cost of product recalls. Of concern to NECA and the sector, is that these two instances have unfairly placed electrical contractors in a position of being held responsible for the quality of electrical components that are beyond their control.

The [national public recall](#) by the Australian Competition and Consumer Commission of up to 4,000 kilometres of Infinity and Olsent branded electrical cable installed in houses across Australia between 2010 and 2013 is a reminder of the costs to industry and the challenges that product recall programs hold for regulators, consumers and the industry.

Initially, the ACCC estimated that 40,000 properties could be affected by the recall, however the [most recent estimate](#) is closer to 20,000. The Director of the now defunct company that imported the non-conforming product faces criminal charges.

NSW Fair Trading has commenced legal action against the Director of the Infinity Cable Co. and the matter is now before the court.

NECA was a foundation member with respect to the ACCC working party and has proactively worked with the ACCC in finding a solution to the Infinity issue.