August 2023
Joint Industry Submission

Industry Response to Queensland Government's Consultation on the *Electrical Safety Act 2002* Review

neca national electrical and communications association

MASTER ELECTRICIANS AUSTRALIA

National Fire Industry Association Australia

Overview

The National Electrical and Communications Association (NECA), Master Electricians Australia (MEA) and the National Fire Industry Association (NFIA) are pleased to make this submission in response to the public consultation on the recommendations made by the independent review of the *Queensland Electrical Safety Act 2002,* and its subordinate legislation.

The three associations have already provided a joint submission, on the recommendations outlined in the *Response to the Review of Queensland's Electrical Safety Act 2002 – Key Definitions and Emerging Technologies – Discussion Paper* that focused on the review recommendations 1, 2, 4, 5, 6, 7, 8, 13, 17 (a) & (c) and 74 (c).

This submission provides comments on all the other remaining recommendations within the review's final report but does not repeat comments from our earlier submission on the discussion paper recommendations.

In developing this submission, the industry associations have sought comments from our membership base, and members' views are therefore reflected in this submission.

NECA, MEA and the NFIA commend the Queensland Government for undertaking such a fundamental review of the *Electrical Safety Act* 2002 and its subordinate legislation.

Development of the 2002 Act

The 2002 Act has now been in place for more than 20 years and during that time there has been a considerable advancement in technology, and as a result Queensland has seen substantial improvements in electrical safety within our industry and the broader community.

NECA, MEA and NFIA are resolute in promoting electrical safety as being of paramount importance in the workplace and a key driver of business success.

The industry is heartened to read in the Queensland Government media release that the government is

> *"… committed to working through the Review's 83 recommendations in an evidence-based approach with business, workers and the community.*
>
> *This will allow careful assessment of the case for change, including potential costs and impacts and best approaches to legislative change.*
>
> *It is critical that any legislative changes provide genuine improvements to safety outcomes and that the impacts from such change are proportionate to risk."*

Extensive and effective stakeholder consultation was critical to the development of the original *Electrical Safety Act 2002*, the first standalone electrical safety legislation in Queensland.

In the second reading speech on 7th August 2002, the then Minister responsible for electrical safety stated that "extensive consultation has been undertaken in the development of this bill through the Electrical Safety Taskforce and the ministerial review of the Electrical Safety Office.

In addition to these public reviews, a reference group comprising representatives from the Electrical Workers and Contractors Board, Energex, Ergon Energy, Powerlink, the National Electrical and Communications Association and the Communications, Electrical and Plumbing Union have all assisted with the drafting of the bill."

NECA was proud to play a significant role in assisting the Queensland Government to draft and introduce the first Queensland standalone electrical safety laws in 2002 and NECA, MEA and the NFIA are proud to continue to play a significant role in modernising and enhancing the legislation today.

Queensland Government's effective level of consultation has resulted in continuous support for electrical safety from all stakeholders, including ongoing bipartisan support for legislative changes in Parliament.

Use of Evidence Base

Since the *Electrical Safety Act* was introduced in 2002, Queensland has seen a substantial reduction in workplace fatalities.

The Queensland Parliamentary Library report 1 on the *Electrical Safety Bill 2002* reported that between 1990 and 2000, there were 116 electrical deaths in Queensland.

Of these, 18 were electrical workers, 28 were non-electrical workers and 71 were members of the general public.

The report also stated that around two non-fatal electrical incidents were reported to the government every day.

Of these fatalities, 35% involved people coming into contact with powerlines, 30% were from electrical appliances, particularly power tools and 26% resulted from coming into contact with fixed wiring. In 2000-01 ESO reported 10 electrical fatalities and 1,234 non-fatal electricity accidents.

These damning statistics resulted in a number of coronial and ombudsman inquiries that lead to the Queensland Government initiating the stand-alone *Electrical Safety Act 2002*, with an enhanced consultative mechanism with the Electrical Safety Commissioner, and the Electrical Safety Board and its committees and a substantially better resourced and more powerful Inspectorate within the ESO.

Since 2002, the reported number of fatalities has declined dramatically.

The Electrical Regulatory Authorities Council (ERAC) provides annual statistical data on electrical fatalities across Australia and New Zealand.

According to ERAC 2 in the 22 years from 2000-01 to 2021-22, Queensland had some 82 fatalities, with 10 occurring in 2000-01 and four in 2021-22.

[1] RBR 2002/24 *The Electrical Safety Act 2002 (Qld)* (QPL August 2002)
[2] Electrical fatal Incident Data Australia and New Zealand 2021-22, Electrical Regulatory Authorities Council

The rate of fatalities per million population has also declined in Queensland between 2000-01 and 2021-22 from more than 3.0 deaths per million population to less than 0.5 deaths per million population.

The ERAC data also points to the majority of fatalities also being members of the general public and non-electrical workers, with electrical workers making up the minority.

While this reduction in fatalities is highly commendable, NECA, MEA and the NFIA acknowledge that more needs to be done and commends the government for focusing on strategies that the evidence points to making a difference.

Statistical data continues to point to the need to improve electrical safety in non-electrical workers and in the general public, particularly with safety from overhead powerlines.

Recommendations supported

We support the following recommendations in full: 3, 10, 11, 12, 14, 15,16, 17, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 36, 39, 40, 44, 45, 46, 47, 49, 51, 52, 53, 55, 56, 58, 62, 63, 64, 65, 66, 67, 68, 71, 72, 73, 74, 75,76, 77, 78, 79, 80, 81 and 83.

In regard to **recommendations 66** (retrofitting safety switches), **67** (de-energising prior to working near energised parts of an electrical installation) and **68** (de-energising domestic roof spaces prior to working in the roof), the industry provides strong support for these recommendations as significant safety measures that would make a difference to the electrical risks associated with electricity.

Recommendation 66 on Safety Switches:

We have for a long time promoted the retrofitting of safety switches on all circuits in domestic residences as one of the most important ways of improving electrical safety.

It is fundamental the Queensland Government uses evidence base to introduce changes to improve electrical safety.

Our members continue to support the installation of safety switches as a way to save lives, and our members constantly promote the benefits of adding these safety devices to domestic and commercial premises.

While the industry recognises that the number of premises covered by safety switches continues to grow, there are still a lot of properties that are not covered by these life saving devices.

In implementing recommendation 66, we suggest that the government consider using trigger points such as at the time of sale or next lease renewal, for ensuring that premises have safety switches on all circuits.

The current laws that cover retrofitting on power points alone are not sufficient and there are a number of fatalities in domestic premises that could have been averted had a safety switch been installed on all circuits.

Recommendation 67 on Arc Flash:

Our collective members have for some time been concerned about the number of arc flash incidents that are occurring and we have published a number of articles to better educate our members on the dangers of an arc flash and how to safeguard against it.

Additionally, NECA also offers for sale through NECA Trade Services, a considerable range of arc flash rated clothing and PPE that help to protect workers in the event of an arc flash.

Amongst our members, there has been general agreement for consideration of introducing legislative provisions to de-energising the installation when workers are working near exposed live parts as proposed by recommendation 67.

However, members did point out that there needs to be some flexibility in the rules for places such as “hospitals, airports, major data centres, etc.”

Recommendation 68 on de-energising electricity for work in roof spaces:

Queensland has had an unfortunate history when it comes to having fatalities from non-electrical workers when they enter roof spaces to undertake work.

We therefore support recommendation 68 to require de-energisation for all workers who work within a roof space.

The challenge will be on how to ensure adequate education and awareness is provided to non-electrical workers to ensure they comply with this requirement.

Recommendations supported in principle

We support the following recommendations either in principle or with a few qualifications – 9, 18, 19, 20, 33, 34, 35, 37, 38, 41, 43, 48, 50, 69, 70, and 82.

This submission will address each of these below.

Recommendation 9:

Consistent with industry's response to the Discussion Paper regarding Recommendations 1 and 4, our position with regards to Recommendation 9 is that fire protection contractors, in performing ELV, are currently licensed under a framework governed by the QBCC and ESO.

This large industry works safely in an ELV environment installing fire protection panels and emergency lighting, for example, and could be adversely affected by these changes.

We strongly support the current environment in relation to fire protection work and contractor licensing, as introduced by the BIFOLA 2020 and the QBCC Fire Protection Licensing Amendment 2020.

Recommendations 18 and 19:

We support in principle better clarification of the rules relating to safety observers but questions the proposal to require safety observers to be present in all situations involving live line testing and to mandate refresher training of the course RIISAM214A, as this course seems to be more aligned to the resources sector and not relevant in all electrical situations.

Recommendation 20:

While we support the proposed clarifications to the miscellaneous terms found in the core definitions as contained in the review paper, we remain concerned that there is no recommendation on what constitutes electrical design work.

We consider that this ambiguity exposes electrical contractors to breach of act challenges in relation to design obligations or rights and work scope changes or modification to designs when contracting.

The case law (Agripower Australia Ltd v QLD Engineering & Electrical Pty Ltd BS No 1597 of 2015) ruling has been used by members of Engineers Australia to infer that if a scientific calculation is required to complete the electrical scope of work using formulations within an electrical standard, then an RPEQ needs to sign-off or certify the design.

This means that any electrical contractor sizing conduits, cables, or interpreting a method of installation not explicitly prescribed in the standards, could be deemed to be in breach of the Act.

We would like to see a definition of electrical design work added to the Act.

Recommendation 33:

We support this recommendation in principle but consider that adding an assessment section within ESO to audit RTO's is in fact the role of ASQA, and we therefore consider that this would be unnecessarily duplicative.

Recommendations 34 and 35:

We support recommendations 34 and 35 in principle.

We support continuous learning and maintaining currency with new technology and updates to the legal requirements.

Similarly, we support in principle conducting a review of the licensing renewal assessment procedures, including testing requirements.

We do however, have a concern about who has financial responsibility for workers maintaining their CPD.

This should be the responsibility of the workers, with employers choosing whether to cover these costs at their discretion.

Consideration also needs to be given to how electricians based in remote and rural locations can access continuous learning opportunities.

Recommendation 37:

While we support the intent of recommendation 37 to assist apprentices to transition to work after completing their apprenticeship, NECA would like to offer an alternative proposition to that of the recommendation.

Our members have suggested that since Certificate III is issued before the apprenticeship is completed, that the licence application from an Apprentice should be permitted to be made once the Certificate III is completed.

This would need to be accompanied by a declaration from the employer that the person is intended to be employed until the end of the successful completion of the apprenticeship contract and this would provide the lead time for the licence to be considered by the ESO and issued with an effective date being the day after the date of the apprenticeship contract.

Recommendation 38:

While we support providing all licensed electrical workers with user friendly electronic copies of Australian Standards, we are concerned with this recommendation that proposes that ESO provide these copies with a commensurate increase in electrical license fees.

Members have raised concerns about what the increased costs might be.

Recommendation 41:

We support this recommendation in principle but consider that in determining what the fit and proper person might be, it is worth looking for existing examples of the criteria, so that lifelong punitive measures are not introduced.

Recommendation 43:

While we support this recommendation in principle that a QBP should be required to accept reasonable advice from a QTP, we are concerned that penalty infringements for not accepting the QTP's advice should only be considered should the regulator find evidence that there has been a breach of the legislation.

Recommendation 48:

While we support electrical safety audits of the electrical systems of recreational vehicles every 10 years, we would like to propose that these audits must be undertaken by an electrical contractor.

Recommendation 50:

While we support in principle the Commissioner for Electrical Safety and the Electrical Licensing Committee undertaking a review of enhanced auditing schemes, licensing assessments, licensing renewal assessments and CPD, we would like to ensure that these reviews include adequate consultation with industry as part of the process.

Recommendations 69 and 70:

While we support recommendation 69 to have point of sale and 5-yearly electrical installation audits of domestic premises, we recommend that these be conducted by Licensed Electrical Contractors, rather than Licensed Electrical Workers as recommended.

With regard to recommendation 70, we recommend that asbestos found in these audits should only be removed when work is required on the asbestos or near the asbestos.

Recommendation 82:

While we support better clarification of the miscellaneous provisions in the Act, when it comes to demolition work, we would like to point out that the ability to identify the precise areas to be isolated in a demolition site is often difficult to assess by an electrical worker.

We suggest that these isolation certificates should not be seen as a green light to demolish a building with impunity.

Our members have suggested that staged isolations of large commercial buildings are fraught with risks and that the preferred method is to isolate everything and install dedicated construction wiring installation to assist with demolition works.

Recommendations not supported

We do not support the following recommendation either in full or in part – 29, 42, 54, 57, 59, 60, and 61.

This submission will address each of these below.

Recommendation 29:

Recommendation 29 to include Health and Safety Representatives (HSR) and Work Health and Safety Officers (WHSO) in the *Electrical Safety Act* cannot be supported.

The industry is concerned that in order to have a HSR deeming any electrical systems to be non-compliant, unsafe, or other, they must be electrically trained and qualified.

Additionally, a QTP is the responsible person within a business for overseeing electrical work and for a variety of reasons a QTP simply cannot be reporting to a HSR.

Recommendation 42:

We do not support this recommendation that proposes no longer accepting business experience as appropriate for becoming a QBP.

The industry believes that discretion should still be given for the recognition of prior learning for a QBP based on business experience and other formal qualifications that a prospective QBP might have achieved.

We do not believe it is appropriate to require all QBP's to undertake a specified training course irrespective of their past experience.

Recommendation 54:

We do not support this recommendation that proposes that a QBP and/or QTP be referred to the Licensing Committee whenever a worker is referred to the Committee for breach of s. 106 of the *Electrical Safety Act 2002*.

We believe that where the evidence is that a worker has performed unsafe electrical work, and they are summoned before the Licensing Committee on a s.106 breach, it should not be an automatic course of action to also refer the QBP and/or QTP to the Licensing Committee.

This will create a reverse onus of proof.

Recommendation 57:

The industry does not support this recommendation that proposes creating a new offence of negligence as a category 1 offence.

In this regard, we consider that the current test of "gross negligence" (the reckless or purposeful indifference to the reasonable safety of others) for a category 1 offence should remain as is.

Recommendation 59:

We do not support this recommendation, which was unfortunately not raised during the consultation period with the Industry Reference Group that was set up during the drafting phase of the report by the independent reviewer.

Recommendation 59 suggests that it is proposed the Regulator "designate limited powers of inspectors to relevant union officials". The extent of these powers has not been made clear.

While recommendation 59 also calls for powers "similar" to that of Electrical Licence Inspectors in Western Australia (WA), it is unclear to what extent such powers are proposed to be reflected in Queensland.

For example, under the WA legislation, Electrical Licence Inspectors are defined as public officers under the *Criminal Code* because they exercise authority under a written law, regardless of whether or not they are employed under the *Public Sector Management Act 1994.*

WA legislation also specifies that in addition to complying with general conduct requirements that the Electrical Licence Inspectors (Trade Union) shall:

- not use his/her powers of inspection to gain entry to premises or access to facilities for purposes other than those to which his or her powers relate; and
- refrain from using his/her inspection powers in any way that may be perceived as supporting or participating in any industrial issue.

Our members have expressed concerns that the presence of union inspectors could cause unnecessary disruptions on worksites and potentially hamper productivity, resulting in additional costs being incurred by the industry without any commensurate benefits.

WA's Code of Practice for Electrical Inspectors further adds legal obligations on the Director-General of the Department of Commerce, as the head of Energy*Safety* in relation to inspectors' duties and responsibilities, and conditions of employment as public officers.

The extent to which legislation in Queensland is proposed to reflect the provisions set out in the WA system has not been made clear.

Existing Queensland Government inspectors located in Cairns, Townsville, Mackay, Central Queensland, Wide Bay, South-West, Sunshine Coast, North Brisbane, South Brisbane, Ipswich and Gold Coast provide the Electrical Safety Office with wide licensing inspection coverage, while responding to incidents and undertaking proactive audits based on industry areas of priority.

No evidence has been presented to suggest any unmanageable compliance concerns to the extent that Queensland Government's inspectors require additional support across the state.

The industry recommends the Queensland Government give due consideration to the role of inspectors overall, including impacts of the rollout of digital licences in the state.

We agree that licensing compliance is fundamental to ensuring electrical safety, however there is no evidence to suggest widespread unlicensed work being undertaken in commercial or construction projects, with the issue reportedly confined to small residential projects.

This recommendation's intent and impacts are unclear and inadequately evidenced to warrant industry support for a legislative amendment.

Recommendation 60:

We do not support this recommendation that proposes implementing similar provisions from the *Queensland Coal Mining Safety and Health Act 1999* that would allow the union after a ballot of its members to appoint up to three industry safety and health representatives for a term of up to four years.

We would like to point out that the electrical contracting industry is somewhat different from the mining industry, which has vast employment bases, with the vast majority of electrical contracting businesses being less than 10 employees.

The industry considers that introducing such a provision on small electrical contracting businesses would add an unnecessary and unaffordable layer of costs on these businesses.

Further, the rules relating to Health and Safety Representatives from the *Work Health and Safety Act 1995* already apply to relevant electrical contracting businesses.

Recommendation 61:

We do not support this recommendation that proposes conducting a review of the financial contributions that support the Electrical Safety Office (ESO) to require proportionately determined financial contributions from all relevant Government Owned Corporations and industry sectors including electrical contracting and renewable generators, in addition to existing "electrical safety contributions" for distribution entities.

ESO receives a significant industry contribution from the electrical distribution entities based on the number of electrical meters within their distribution network and ESO also retains all earnings from license fees levied on electrical contractors and electrical workers.

ESO receives no funding from the Queensland Government Consolidated Fund.

Electrical Contractors already provide funding directly to ESO in the form of license fees and we are opposed to any further contributions being levied on electrical contractors.

The industry would however, support the Queensland Government providing additional funding to ESO from the Queensland Government Consolidated Fund or reviewing whether additional electrical entities such as the transmission entities should be contributing funds to ESO.