



Our ref: PRJ1006250
Contact officer: Amanda Dadd
Contact phone: [REDACTED]

Ngunnawal
23 Marcus Clarke Street
Canberra ACT 2601

17 August 2023

GPO Box 3131
Canberra ACT 2601

Electrical Safety Office
Office of Industrial Relations
Queensland Government

Tel 02 6243 1111
Fax 02 6243 1199
www.accc.gov.au

Sent by email: espolicy@oir.qld.gov.au

ACCC submission to the consultation on the review of Queensland's *Electrical Safety Act 2002* – Final Report

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the review of Queensland's *Electrical Safety Act 2002* (the ES Act) (the Review).

The Review is an important opportunity to ensure the ES Act is fit-for-purpose now and into the future. The ACCC previously made a submission dated 30 June 2023 in response to the Office of Industrial Relations' Discussion Paper on the Review. Our previous submission focussed on extra low voltage electrical equipment and electric vehicles to reflect the focus of the Discussion paper.

This submission builds on the ACCC's previous submission and covers broader issues discussed in the Final Report, including the scope of the ES Act, duties of importers and suppliers, regulatory powers under the ES Act, and the role of recalls to address unsafe goods.

Overview

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), including the Australian Consumer Law (ACL), regulate national infrastructure and undertake market studies.

The ACCC and the state and territory consumer protection agencies are responsible for regulating the safety of general consumer products. Specific types of products such as chemicals, food, therapeutic goods and electrical products are regulated by specialist regulators. This is because regulating specialist products, such as consumer electrical equipment, requires a tailored approach and technical expertise.

The product safety provisions in the ACL do not contain the full suite of tools needed to effectively regulate specialist products. The ACL is economy-wide legislation that contains a limited suite of provisions for general product safety regulatory tools. It does not contain sectoral-specific regulatory tools, such as those that are required for effective regulation of

the safety of electrical products. In addition, using regulatory controls across multiple levels of government to regulate specialised product types is likely to lead to increased fragmentation of responsibilities and create inefficiencies, duplication and regulatory gaps.

The existing regulatory framework for electrical products is made up of different state and territory laws, which are administered by specialist electrical regulators in each state and territory. The operation of the state and territory laws is supported by the national consumer product safety voluntary recall system administered by the ACCC.

The Electrical Regulatory Authorities Council (ERAC) also supports electrical safety regulation. It coordinates activities between all Australian and New Zealand governments and is focused on strategy, policy and reform.

The ACCC reiterates the observation from our previous submission that while the regulation of electrical safety has many similarities across the jurisdictions, it is not a harmonised national framework. We noted that the existence of different laws in each state and territory results in regulatory gaps and creates an inconsistent approach to the regulation of electrical products which is unsustainable in Australia's modern economy.

The ACCC commends the Queensland Government for undertaking the Review and consulting publicly on all issues raised. We consider it essential that next steps resulting from this consultation process harness opportunities to move towards national harmonisation.

Scope of the ES Act

The Review examined several matters that relate to the jurisdiction of the ES Act over products/equipment and entities in the electrical equipment supply chain. The ACCC reiterates the criticality of all consumer electrical products being regulated by specialist regulators. In our previous submission we highlighted the need for state and territory electrical regulators to regulate extra low voltage products, given the growing number of safety incidents and near misses associated with this type of equipment, particularly those with rechargeable lithium-ion batteries. The number of portable consumer products powered by rechargeable lithium-ion batteries is likely to continue to rise over the next decade.

Ensuring the ES Act's jurisdiction is clear and duties are consistent across bricks and mortar and online retailers, regardless of whether they operate onshore or offshore, promotes safety and enables fair competition. As such, we support the recommendation to ensure the jurisdiction of the ES Act clearly covers electrical equipment sold on online platforms to Queensland consumers. We also support the recommendation to clarify the meaning of 'importers' to ensure it operates as intended. This is particularly important due to changing trends and increased complexity in ordering, facilitation and delivery of products from overseas, including via online platforms.

The effective regulation of unsafe electrical products across domestic and international borders is essential for the efficient and effective operation of a consumer product safety system. The ACCC strongly supports requirements that will ensure recall orders are complied with throughout the supply chain and in multiple jurisdictions. We strongly support collaboration among all state and territory regulators and the ACCC to achieve role clarity for national level recalls, which will facilitate consistent and coordinated recalls involving overseas parties.

Duties across the supply chain

The ES Act imposes duties on several entities in the electrical equipment supply chain including importers, suppliers, designers, and manufacturers of electrical equipment. These duties ensure electrical equipment is safe for use in Queensland. The Review made several recommendations in relation to existing duty provisions under the ES Act.

The ACCC broadly supports the recommendation to consider enhancing the regulation of in-scope electrical equipment by applying additional duties on various actors across the supply chain. The ACCC also supports the recommendation to strengthen the requirements for importers and suppliers of electrical equipment to confirm products conform with the appropriate standard or Regulations, whichever is greater, and are safe prior to sale.

Powers within the ES Act

The ES Act contains a range of regulatory powers including powers to make regulations, obtain information and deal with non-compliance.

The Electrical Safety Office should be equipped with regulatory powers that are fit-for-purpose and keep pace with technological change. Currently, the ES Act empowers the Electrical Safety Office to only obtain information related to contraventions, enforcement, and licensing decisions. The Review recommends broadening these powers to allow the Electrical Safety Office to obtain information regarding 'electrical safety' to enable it to better fulfill its function to 'provide advice and information on electrical safety to duty holders under this Act and to the community'. This recommendation is a positive step forward for consumer safety and the ACCC supports broadening these powers.

The ACCC reiterates the observation from our previous submission that regulatory regimes need to keep pace with technological change in relation to extra low voltage products. The ACCC agrees that legislative design may better cater for emerging technologies and associated electrical safety risk. The ACCC suggests a broad definition of in-scope electrical equipment should include all extra low voltage equipment by default. This will future proof the scope of regulation. An exemption power could also be provided so that equipment with longstanding evidence of posing a very low safety risk (e.g., AA batteries) can be readily exempted from the scheme. This helps align regulatory effort with risk.

Addressing unsafe goods in the marketplace by recalls

Australians expect the products they purchase to be safe, and that suppliers will take all reasonable steps to protect consumers. When a product is potentially unsafe, suppliers should be responsible and protect consumer safety as quickly as possible by removing the product from sale, contacting consumers, and publicly offering to refund, repair or replace the product.

While suppliers are expected to recall a product voluntarily, electrical regulators, such as the Electrical Safety Office, play a key role in identifying unsafe electrical equipment and working with suppliers to remove it from the marketplace and warn consumers of the safety risks. The responsible Minister in Queensland may also issue a compulsory order where the Minister considers that equipment places a person or property at electrical risk. The Electrical Safety Office also collaborates with the ACCC to publish industry initiated recalls in Queensland on the Product Safety Australia website.

Given the importance of recalls in protecting consumers from harm, the ACCC strongly supports the Review's recommendations to clarify and strengthen the duties of suppliers and officers throughout the supply chain. This includes duties relating to the removal of unsafe electrical equipment from sale and display, additional record-keeping responsibilities at the point of sale for prescribed electrical equipment to assist with recalls and compliance activities and preventing suppliers from using liquidation to avoid recall responsibilities by placing obligations on officers of the relevant supplier.

The broader electrical safety framework

Queensland's review of the ES Act and this consultation process is a key step towards improving electrical safety for Queensland consumers. As noted in our previous submission, there is a critical need for nationally consistent laws on electrical safety and a harmonised framework to support them. A modern, fit-for-purpose harmonised framework should:

- include compulsory recall powers for each state and territory
- include comprehensive regulatory coverage for extra low voltage products (e.g., lithium-ion batteries)
- contain consistent state and territory pre-market and post-market controls for electrical products
- provide national ministerial oversight and decision making involving all jurisdictions to ensure the regulatory framework is fit for purpose and can adapt to emerging challenges
- provide a single point of contact for consumers and industry to report issues and seek safety information about electrical products
- ensure greater clarity of the roles and responsibilities for the Commonwealth and the states and territories in relation to electrical safety regulation.

The ACCC notes the Review identified opportunities to enhance the Electrical Equipment Safety System (EESS). The EESS was introduced to improve harmonisation of electrical equipment safety requirements across Australia through risk-based registration and certification requirements for consumer electrical products. The ACCC commends Queensland for its leadership role in relation to the EESS and encourages all jurisdictions to sign the Intergovernmental Agreement on the EESS and adopt the system into their legislation. Currently, only Queensland, Victoria, Tasmania, and Western Australia have signed the Intergovernmental Agreement on the governance of the EESS. We also broadly support Queensland referring matters to the EESS review for consideration.

A national framework would also benefit from a national database to assist regulators to detect new and emerging risks, inform compliance monitoring and support enforcement activities. While the ERAC publishes data collected by the regulators for their annual accident and fatality reports, this data mostly consists of a high-level trend analysis of deaths and asset type which is of limited use for effective identification of new and emerging risks relating to particular products or suppliers. To manage safety risks, it is critical that responses to safety incidents and enforcement activities are intelligence-led and data driven. As such we recommend the electrical safety framework should also include a central repository for incident and injury data supported by real-time data collection and analytics. This would be a significant step forward for consumer safety and regulatory efficiency.

The ACCC encourages the Queensland Government to harness opportunities presented by the Review to bolster national discussions to enhance the safety framework for electrical consumer products and looks forward to working with Queensland in the future towards this outcome.

Next steps

If you would like to discuss the ACCC's submission, please contact Amanda Dadd, Acting General Manager, Risk Management and Policy Branch, on [REDACTED] or at [REDACTED]

Yours sincerely



Catriona Lowe
Deputy Chair