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ACCC submission in response to the discussion paper on the Statutory review of the Gas and Electricity (Consumer Safety) Act 2017

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to make a submission to the NSW Department of Customer Service in response to its discussion paper on the statutory review of the *Gas and Electricity (Consumer Safety) Act 2017* (G&E Act). The ACCC sees this review as an important opportunity for NSW to take steps to reducing the unnecessary regulatory complexity by moving toward a nationally consistent system.

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), regulate national infrastructure and undertake market studies.

The ACCC recognises that electrical safety of consumer products is primarily regulated under state and territory legislation and overseen by electrical safety regulators in each state and territory. We understand the Electrical Regulatory Authorities Council (ERAC) supports electrical safety regulation by coordinating activities between Australian and New Zealand governments and is focused on strategy, policy, and reform.

The existence of different laws in each state and territory results in an inconsistent approach to electrical safety regulation which poses several challenges for consumers, government agencies and industry, particularly where products are supplied nationally, including:

- consumers may find it difficult to identify whether the products they wish to purchase are safe and approved by the regulator
- a lack of regulatory coverage for extra-low voltage products
- a lack of uniform state and territory compulsory recall powers. This adds complexity and regulatory duplication when managing recalls and other product safety issues for electrical consumer products
- businesses must understand and comply with different laws and deal with multiple state and territory regulators for the products they supply; and
- there is no single point of contact for consumers or industry to report issues or seek safety information about electrical products.

The need for nationally consistent electrical safety laws is a longstanding issue that was identified by the Productivity Commission in its 2017 report on Australia's consumer law and

by the House of Representatives Standing Committee on Economics 2019 report on impediments to business investment. The transition toward renewable energy and associated battery systems means that electrical safety laws should be forward looking and provide a harmonised approach to regulation.

The status quo is not sustainable, and change is required to better protect consumers, alleviate the regulatory burden on businesses caused by inconsistencies in state and territory approaches and increase consumer confidence in the safety of electrical products. Specialist electrical safety regulators are best placed to regulate these products because they possess the necessary pre-market risk controls, technical expertise, industry connections and resources to manage the risks.

Collectively, government agencies should harness opportunities, such as this statutory review, to take steps toward building a fit-for-purpose nationally consistent electrical safety framework. The statutory review of the G&E Act presents a significant opportunity to address key issues with the existing framework that will help to achieve national consistency and provide immediate benefits to consumers, government agencies and industry.

Extra-low voltage equipment

The existing electrical safety regulatory framework provides minimal coverage for extra-low voltage (ELV) products. We understand ELV includes equipment which operates at a voltage below 50 volts alternating current or 120 volts ripple-free direct current. Currently, there is a lack of comprehensive regulatory coverage by state and territory electrical safety legislation.

We understand that the historic grounds for not regulating ELV equipment is because electrical safety authorities were of the view that these products posed a lower safety risk, as mentioned in the discussion paper. The ACCC considers this view to be outdated given the growing number of safety incidents, resulting in some instances in serious injury and property damage, associated with ELV equipment, particularly products with rechargeable batteries including those powered by lithium-ion.

Prominent examples of such safety incidents in Australia include the series of house fires caused by [self-balancing scooters](#) powered by rechargeable lithium-ion batteries and the high-profile recall of [Samsung Galaxy Note 7 smartphones](#) associated with fires and explosions of the batteries. The ACCC and state and territory electrical safety regulators are also currently overseeing recalls of [LG batteries](#) in home energy storage systems which may overheat and catch fire. Since October 2019, there have been nine reported incidents in recalled batteries in Australia resulting in property damage and one injury, and eleven reported incidents and one injury in recalled batteries in the United States.

The ACCC believes that safety incidents associated with ELV equipment are likely to continue to occur particularly with the increasing electrification of household items and ongoing attempts by manufacturers to reduce the size of batteries and increase power output at the same time. The proposal to exclude ELV from the new definition of electrical equipment in the G&E Act is problematic.

We have concerns about potential safety risks in some ELV equipment and support regulation based on the Victorian model which requires all electrical equipment, including ELV products, to be electrically safe. While we acknowledge that the absence of relevant standards (AS/NZS or IEC) for some equipment may mean jurisdictions prescribe different regulations, we consider that ERAC is well positioned to coordinate a nationally consistent approach until such standards are developed.

The discussion paper proposes an amendment to the G&E Act to empower the Secretary to declare any ELV equipment as high-risk and issue a prohibition order should the need arise. The stated rationale for this amendment is to minimise the regulatory burden on industry

while addressing their safety concerns. The ACCC considers this proposed amendment to be an inadequate solution to the growing number of safety incidents associated with ELV equipment.

Taking a reactive approach to regulating ELV equipment does not strengthen consumer confidence and risks creating uncertainty for suppliers seeking clarity about their obligations. Further, solely relying on an enforcement mechanism to manage risk is resource intensive and narrows the regulatory approach to addressing safety issues after they may have already caused harm to consumers.

The ACCC strongly urges the NSW Department of Customer Service to consider providing comprehensive regulatory coverage for ELV equipment under the G&E Act. We recommend working with ERAC to ensure a nationally consistent approach to regulation of ELV equipment.

Electrical Equipment Safety Scheme

The ACCC considers the EESS to be a viable and necessary step towards building a nationally consistent electrical safety regulatory framework. We understand the scheme enables regulators to take a proactive approach to regulating household electrical equipment through the application of risk-based registration and certification requirements. The EESS' publicly accessible national database of responsible suppliers and electrical equipment registrations allows consumers to make informed choices about the safety of electrical products.

Currently, Queensland, Victoria, Tasmania, and Western Australia have signed the Inter-Governmental Agreement (IGA) on the governance of the EESS. We understand that, apart from NSW, all other jurisdictions have advised industry they accept the EESS and its principles to show compliance with these requirements, even if they have not yet formally adopted the scheme.

The ACCC recognises that there are variances in the implementation of the EESS within participating jurisdictions. We consider this to be a reasonable expectation in a federated system of government as evidenced in mature regulatory regimes with a nationally consistent approach such as food and poisons. Further, the adoption of the EESS does not nullify the ability of NSW to reshape the existing enforcement powers enabled by the current scheme under the G&E Act.

While NSW is not part of the EESS, making progress toward a nationally consistent electrical safety regulatory framework will be challenging. In light of NSW's commitment to its current scheme, the ACCC considers a nuanced approach to EESS adoption would allow NSW to retain elements that fit the local regulatory environment as well as achieving the benefits of greater national harmonisation.

We acknowledge the potential regulatory burden described in the discussion paper, and so the ACCC encourages NSW to consider transitional arrangements in adopting the EESS. A phased introduction will minimise disruption by ensuring continuity of industry business activities and allowing time for adjustments to be made to meet new compliance requirements.

Product safety recalls

Currently, all states and territories, except for the Northern Territory and Western Australia, have compulsory recall powers. The absence of uniform powers across the jurisdictions creates regulatory gaps when a nationally consistent response is required to remove an unsafe electrical good from the marketplace.

The regulatory gaps in the existing framework place a greater reliance on the ACCC to intervene in a specialist product safety regime. Divided responsibility across regulatory regimes is inefficient and contrary to the Australian Government's Statement of Expectations for the ACCC, as the ACCC is expected to avoid duplicating the work of specialist regulators. The ACCC does not have the requisite pre-market controls, technical expertise and industry connections. Any involvement in the work of specialist electrical safety regulators also relies on the ACCC diverting resources away from the ACCC's stated consumer product safety priorities. Even if the ACCC were involved, the burden on industry is high as businesses need to provide updates to different regulators and navigate multiple and sometimes varying compliance requirements.

We support best practice in regulatory design and innovative approaches that improve the safety of consumer products and reduce the likelihood of recalls. In general, we see value in addressing issues at the manufacturer/supplier level as a method to reducing recalls of unsafe products. However, the discussion paper did not explain how the proposed new scheme will operate in a manner that feeds into and supports a nationally consistent approach to recalls.

The ACCC considers that further clarity is needed to determine whether the mechanisms in the proposed new scheme rely on other regulators adopting the same approach and if there are any barriers to achieving consistency.

Incident reporting

Unlike other specialist regimes, the electrical safety regulatory framework does not have a national single point of contact for consumers to report safety issues with electrical products. The ACCC understands ERAC coordinates activities between the electrical safety regulators but does not manage national incident reporting.

Currently, the fragmented approach to incident reporting involves electrical safety regulators performing this function independently. ERAC publishes the data collected by regulators in annual accident and fatality reports online. The data provides for high level trend analysis of deaths and asset type by jurisdiction but lacks the clarity needed to inform national-level compliance activities by consumer good or supplier and identification of emerging risks.

The ACCC considers a national single point of contact for reporting electrical safety issues is necessary. We consider that such a contact point will strengthen consumer confidence in the existing framework and enable an intelligence led and data driven approach to managing electrical safety risks. The ACCC encourages NSW to consider how changes to reporting under the G&E Act will contribute to this important endeavour.

Next steps

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

Yours sincerely



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