

# Discussion Paper: Statutory review of the *Gas and Electricity (Consumer Safety) Act 2017*

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## Submission Template

This document is a compilation of all the questions contained in the Discussion Paper. You can download, edit and save your responses and feedback in this document at your convenience. We would prefer to receive submissions in this format, by email to [GasElectricityRegulation@customerservice.nsw.gov.au](mailto:GasElectricityRegulation@customerservice.nsw.gov.au).

The closing date for submissions is **5 December 2022**.

## Overall comment

### National alignment of state electrical safety legislation is needed

Electrical safety laws in Australia are currently the responsibility of State and Territory Governments. The various state and territory electrical product safety regulations are currently not aligned in terms of regulatory scope, the application of standards, product certification, product marking and registration requirements.

Alignment of electrical safety legislations in Australia is overdue. There exists a significant opportunity for substantial productivity and safety benefits if alignment were to occur.

Lighting equipment supply is approached nationally. Due to existing supply chain characteristics, it is simply not possible for suppliers to segment their stock to cater for different rules in different states.

The current misalignments are resulting in trade barriers between jurisdictions, unnecessary compliance costs, commercial risks, market confusion, increasing market non-compliance and decreasing consumer safety.

These misalignments are causing a significant impact on productivity due to the need for additional compliance resources and funds to understand and comply with all regulatory requirements.

These costs are affecting informed businesses bottom line, being passed on to consumers as higher prices and resulting in a competitive disadvantage for businesses that go to the extraordinary lengths needed to comply with all the different electrical safety regulations that currently exist. By comparison, we regularly see uninformed or wilfully non-compliant businesses escape regulatory enforcement action due to regulatory resource limitations.

Many new market entrants are known to be doing little to no compliance work due to the significant complexity involved with the current rules. As an example, the same lighting product can be required to comply with different standards, marking and certification requirements depending on the State or Territory where it is sold. Other

residential/personal electrical equipment markets (e.g. appliances, lighting, accessories, IT) are similarly negatively impacted.

State and territory governments should recognise the productivity and safety benefits to be gained and make commitments to achieve a single approach to electrical product safety in Australia.

As well as alignment at a single point in time, a process is needed to make sure that requirements remain aligned over time.

### **Recommended approach for policy makers**

1. A framework/process that allows for the development and updating of common/aligned electrical safety regulations that can apply across all Australian jurisdictions is badly needed and well overdue.
2. A single law is appropriate for national markets such as electrical equipment supply and electrical work - The Australian Consumer Law is an example of a single consumer safety law that applies across all jurisdictions and is enforced by state regulators.
3. A single approach to electrical product regulatory scope, product marking, certification, the application of standards, company/product registration and enforcement is preferred.
4. Many products sold in New Zealand are supplied from Australia. So, an alignment process that included New Zealand would further improve productivity and market compliance.

### **Questions**

#### **Electricity**

##### **Definition of electrical work**

1. Do you support the changes to the definition of electrical installation work? If not, what changes should be made?
2. Do you support the changes to the definition of electrical equipment? If not, what changes should be made?

See the overall comment above.

The first priority for NSW and all jurisdictions should be the development of a process to align (and maintain the alignment of) electrical safety regulations.

Any further development in regulatory scope should only occur under a national alignment umbrella. Otherwise, there is a risk of further regulatory divergence.

3. Do you support the changes to the definition of electrical installation? If not, what changes should be made?

See the overall comment above.

That is, the first priority for NSW and all jurisdictions should be the development of a process to align (and maintain the alignment of) electrical safety regulations.

Any further development in regulatory scope should only occur under a national alignment umbrella. Otherwise, there is a risk of further regulatory divergence.

4. Do you believe that persons working on generating work should be licensed? If not, why?

### **Electrical Licences**

5. It is not proposed to change the existing regulatory requirements for licensing of employees working on mines. Do you support this? If not, why?
6. It is not proposed to change the existing regulatory requirements for licensing employees of electricity supply authorities. Do you support this? If not, why?
7. Do you support moving the gasfitting licensing requirements into the HB Act?
8. Do you support moving the autogas licensing requirements into the MDR Act?

## Remote re-energisation and de-energisation of smart meters

9. What are the reasons retailers and metering providers are not undertaking remote re-energisation and de-energisation despite having approved safety management plans?
10. What elements of the remote re-energisation and de-energisation framework could be improved to encourage participation in re-energisation and de-energisation among retailers and metering providers?
11. Are there any alternative procedures that could be proposed to improve the framework while ensuring safety during the re-energisation and de-energisation process?

## Electrical Installations

12. Do you support the requirement for electricians to report a defective installation even if it was not their work initially?
13. Are the time limits proposed for reporting the defect suitable? If not, what should they be?
14. Should a penalty be prescribed in the G&E Act that could be imposed on a person that fails to comply with the requirement for electrical installations?
15. Should NSW regulate all ELV equipment? Why or why not?

See the overall comment above.

We recommend that any changes to the scope of NSW electrical safety regulations only occur under the umbrella framework of nationally aligned electrical safety regulations.

Any changes that occur to only NSW electrical safety regulations may be different to those in other jurisdictions resulting in further divergence and difference between state regulations. This outcome would not be helpful for industry or electrical safety.

16. Do you support the inclusion of a power for the Secretary to declare some ELV equipment as high-risk? If not, why?

See the overall comment above.

We recommend that any changes to the scope of NSW electrical safety regulations only occur under the umbrella framework of nationally aligned electrical safety regulations.

Any changes that occur to only NSW electrical safety regulations may be different to those in other jurisdictions resulting in further divergence and difference between state regulations. This outcome would not be helpful for industry or electrical safety.

## Gas

### Definitions

17. Do you support the definition of gas being amended to capture blended gases? If not, why?
18. Should the definition of gas be amended to also capture the use of 100 per cent hydrogen? If not, why?
19. What elements of the regulatory framework would need to be changed to safely accommodate and regulate 100 per cent hydrogen gas appliances?
20. Do you support changes to the definition of gasfitting work to clarify the requirements?

### Autogas

21. Should references to vessels and machines be removed from the definition of autogas installation under the G&E Act? Why or why not?
22. Should the regulation of autogas work and autogas installations in vehicles be transferred into the MDR Act? Why or why not?
23. What other options for regulating autogas work can be viable?

## Appliances

### Electrical appliances

24. Do you consider that the NSW testing and certification process is an effective way to ensure safe electrical articles are safe in NSW? Are the existing costs on business appropriate?

The New South Wales testing and certification process is effective at ensuring safety. However, it is not efficient due to the way that product standards are applied.

The New South Wales Act applies the latest product standard at every point in the supply chain when a product is sold. This has the effect of retrospectively applying the latest standards to products that have been on the market for years and still going through supply chains at supply, wholesale, contractor and retail level.

It can take between one to ten years for products to be imported, sold to a wholesaler and then sold on to retailers, contractors and finally consumers. As an example, in

2015 Lighting Council Australia found incandescent lamps for sale in a retail outlet and those lamps were last manufactured in Australia in around 2003. This is an extreme example. However, it is not uncommon for products to take four to five years to move completely through supply chains.

Product suppliers (i.e. importers) have no control over the stock rotation practices and market sell through of wholesalers, retailers and contractors.

The publication of a new standard does not mean that products compliant with the previous standard become unsafe when that new standard comes into effect. If that were the case the New South Wales electrical safety regulator should recall all products that are being used by consumers and that don't comply with the latest standard.

Regulators such as the Australian Communications and Media Authority apply standards at the point when a product is manufactured, regardless of whether that manufacture occurs in Australia or overseas. This approach is ideal and the most efficient for market and supplier compliance.

Other Australian state and territory electrical safety regulations under the EESS apply the relevant standard when a product is imported or certified/registered. While also not ideal, this approach is preferred over the New South Wales approach.

Importantly, the New South Wales electrical safety regulation has a 'safety net' mechanism that allows the regulator to remove unsafe products from the market.

Where market sectors and regulators agree, international standards (e.g. IEC/ISO standards) should be recognised and accepted as alternatives to Australian Standards:

- Australian Standards committees should play an important role by participating in international committees and making proposals to further develop international standards.
- Conflicted interests (e.g. test laboratories and certifiers) currently push for variations between Australian Standards and international standards to facilitate their businesses.

Re-testing products to new standards and renewal of certificates is a significant cost that is often borne only by suppliers for the New South Wales market alone and not other state and territory markets. Including administration, this cost can reach \$10,000 - \$20,000 per product family for complex products such as portable luminaires.

Where a supplier cannot re-test or re-manufacture a product, they would need to remove those products from the New South Wales market and sell in other Australian jurisdictions. This is a difficult and expensive logistical exercise that can run to hundreds of thousands of dollars.

In at least one case that we are aware of, skip bins full of lighting products were sent to landfill because it was not going to be worth the cost of administration and transport to send the products to another state.

Under EESS rules these products were suitable for sale until the product's certification/registration expired.

Under New South Wales regulations additional burden is placed on retailers to manage the compliance of their stock against the requirements in the New South Wales Gazette. Suppliers are often not aware of all the old products at retail level so the burden falls on retailers to manage compliance. This is a large administrative cost that is not borne in other Australian markets.

The New South Wales certification system allows overseas entities to hold a product certificate that may not be easily traceable to any New South Wales supplier. Overseas entities are outside the reach of the New South Wales legal system so the New South Wales regulator may not be able to hold any business responsible.

The marking of products with the certificate number is another cost (artwork and mouldings) that occurs under New South Wales regulations that does not need to occur under the EESS. This can become particularly costly and problematic when certificate numbers change while the product remains on the market (e.g. if suppliers wish to change certifiers).

## 25. Should NSW adopt the national EESS? Why or why not?

Yes. See the overall comment at the top of this submission.

Suppliers regard the Australian market as one market. However, Australian suppliers must currently manage two main compliance systems that take different approaches to product marking, certification, registration and the application of standards.

Understanding and complying with both regulatory systems is consuming additional resources and is causing a reduction in productivity in the lighting equipment supply market in Australia. Australia should have a single compliance approach across all jurisdictions.

The fact that there was no participation by the New South Wales Government during the development of the EESS and since the first EESS regulations were implemented reflects poorly on the New South Wales Government.

Lighting suppliers in Australia prefer the EESS because:

- Legal responsibility is clearly located with the entity importing equipment. These entities are within the reach of Australian regulators who can prosecute non-compliant suppliers.
- Traceability and visibility of suppliers in the market is increased.
- The marking requirement (application of the regulatory compliance mark – RCM) is easier and less costly for suppliers to manage, especially if certificate numbers change during the lifetime of a product.
- The certification system under the EESS requires only the RCM to be marked on products.
- The application of standards under the EESS is significantly preferred over the approach taken by New South Wales. Suppliers have greater security that products will continue to be allowed to be sold out through supply chains even when standards change.
- No additional compliance burden is borne by retailers.

- A supplier declaration by a responsible person is required under the EESS stating that all products have been assessed for compliance.

26. If NSW were to adopt the national EESS what changes should be made to enhance the operation of the EESS?

See the overall comment above.

We recommend that any changes to the EESS should only occur under the umbrella framework of nationally aligned electrical safety regulations.

Any changes that occur to only NSW electrical safety regulations may be different to those in other jurisdictions resulting in further divergence and difference between state regulations. This outcome would not be helpful for industry or electrical safety.

We recommend New South Wales sign the Inter-Governmental Agreement around the EESS and then propose that any further development of the EESS is conducted by the Senior Council of Officials (SCO) along with industry participation.

Regulations should be open to continuous improvement over time.

There are areas of the EESS that could be further improved including alignment of the rules for the application of standards (i.e. should be a common approach across all risk levels) and regarding the detailed certification requirements (i.e. where level 2 and level 3 products sit on the same test report yet need to be separated for certification purposes). However, the first priority should be for New South Wales to adopt the EESS and then request that improvements are made across all EESS jurisdictions.

27. If NSW were to adopt the national EESS what parts of the NSW scheme should be retained, or considered, in the adoption of the EESS in NSW?

See the overall comment above.

We recommend that any changes to the EESS should only occur under the umbrella framework of nationally aligned electrical safety regulations.

Any changes that occur to only NSW electrical safety regulations may be different to those in other jurisdictions resulting in divergence and difference between state regulations. This outcome would not be helpful for industry or electrical safety.

28. Do you support the implementation of a Level 4 compliance scheme for electrical appliances? If not, why?

No.

A Level 4 compliance system would add factory audits to the compliance system and add considerable compliance costs.

If additional requirements such as a type 4 approach are needed (even if only for a single product category or a few product categories) then New South Wales should join adopt the EESS and make this suggestion to the EESS SCO.

## **Gas appliances**

29. Do you support the introduction of definitions for Type A and Type B gas appliances in the G&E Act? If not, why?
30. Should a new licence be introduced for carrying out work on Type B appliances? If not, why?
31. If a new licence was introduced, what considerations should be made in developing the licencing requirement for Type B gas appliances?
32. Do you support the prescription of standards for servicing of gas appliances under the G&E Act? If not, why?
33. Should the servicing and repair of gas appliances only be done by licenced gasfitters?

## Miscellaneous

### Notifications of serious electrical and gas accidents

34. Who do you think should report serious gas or electrical accidents that occur in a person's home?

The ACCC already has mandatory reporting requirements.

35. Do you think that a serious electrical or gas accident should be notified to the Secretary within 24 hours of its occurrence? Why or why not?

The ACCC and state workplace health and safety regulations already have reporting requirements.

36. Do you think the definition of a serious electrical accident or serious gas accident should be amended to include temporary disability and receiving a shock or injury from electricity? If not, why?

Any such reporting requirements are only needed once for each sector if the market. For example, the ACCC has reporting requirements for consumers. Workplace health and safety regulations have reporting requirements for workplaces.

37. Do you believe that the industry would benefit from the publication of relevant incidents and compliance investigation data by NSW Fair Trading? If not, why?

Yes, compliance investigation data should be published as this would act as a deterrent to unscrupulous suppliers and would also show reputable suppliers that the regulator is active in the market and removing non-compliant products from the market.

### Enforcement and audits

38. Do you support the proposal for outsourcing electrical inspection work under the G&E Act? If not, why?

39. What requirements in terms of qualifications, evaluation of work and powers under the G&E Act should be considered if electrical inspection work were to be outsourced?

40. Do you support expanding the G&E Act to impose a penalty on a person that installs an appliance that is subject to a prohibition notice?

41. Do you support the adoption of a tiered approach for prescribing penalties under the G&E Act? If not, why?

42. Do you support the changes proposed to maximum penalty amounts in Appendix 1? If not, please advise what should be changed?

## Additional feedback

Is there anything you would like to add on any aspect of the Discussion Paper or the *Gas and Electricity (Consumer Safety) Act 2017*?

Regarding regulatory surveillance and enforcement:

- We encourage regulators to join forces and closely coordinate their compliance activities and information/investigations sharing. A single system/approach to surveillance and enforcement should be occurring.
- Regulators should be able to interrogate import data obtained from the Commonwealth Department of Home Affairs to identify all electrical equipment importers over time. Using this information, it should be possible to see which importers are:
  - Not registered on the EESS database and require education;
  - New to the market and may require education;
  - Importing high risk or 'in-scope' equipment and may require auditing.

Further, we have repeated our overall comment below in case this is the only place that this comment will be accepted in this submission template.

### Overall comment

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