



30 August 2016

Consumer Law Enforcement and Administration
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By email www.pc.gov.au/inquiries/current/consumer-law

**Enforcement and Administration Arrangements
Underpinning The Australian Consumer Law**

Lighting Council Australia welcomes the opportunity to comment on the Australian Consumer Law (ACL) use of the multiple regulator model and product compliance.

Lighting Council Australia's submission is our response to the Productivity Commission's request for participants' comments on the general success of the multiple regulator model. Our response especially relates to the specialist regulators and non-compliant product issues.

Lighting Council Australia engages and has experience with a number of specialist regulators, including: The Australian Communications and Media Authority (The ACMA), The Greenhouse and Energy Minimum Standards (GEMS) regulator and state electrical safety regulators.

Our engagement with ACMA and GEMS have delivered outcomes that work well, are reasonable in cost with tolerable levels of red tape. The ACMA compliance model and standards used align with those used in a number of other international jurisdictions. The ACMA and GEMS regulator regularly consult with industry. The GEMS regulator is presently consulting on substantial extension and regulatory burden changes to lighting products being considered for energy efficiency regulation. Industry considers both ACMA and GEMS could improve market surveillance and policing actions to address non-conforming product issues.

The state and territory based electrical safety authorities provide an example of poor regulatory coordination. Around 2007 safety regulators recognised the safety scheme then in operation (developed in the 1950s) required revision to improve regulatory visibility, compliance resourcing, coordination of compliance activity and compliance of imported products. The key outcomes were to be national consistency, a single publicly accessible database of all electrical product suppliers, along with a database listing of all medium and high risk electrical products, consistent scheme rules across jurisdictions, a single recognised mark, ie the "Regulatory Compliance Mark" (RCM) on all appropriate product and a small fee for supplier registration. This income to provide additional resources was to be focused on

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compliance activity and product audits. Such a scheme was to be known as the Electrical Equipment Safety System (EESS). It was developed by the Electrical Regulatory Authorities Council. Refer to: www.erac.gov.au

The ACMA additionally agreed to align its supplier registration database and product marking requirements with the ERAC EESS requirements. Since 2013 all electro-magnetic compatibility (EMC) generating product suppliers and Queensland electrical equipment suppliers along with other state or 3rd party certified electrical equipment have been listed on the national database managed by Energy Safe Victoria.

Lighting Council Australia joined the consultation group led by the Queensland Government's Electrical Safety Office (Secretariat of ERAC) during 2007. The work undertaken by the Queensland Government at that time and to date is a good example of industry consultation regarding regulatory review. All states except NSW were involved in the ERAC review. NSW was invited but did not participate. The Queensland Electrical Safety Regulator Regulatory Impact Statement 2009 on the proposed ERAC EESS was signed by all state ministers except the NSW Minister. Queensland developed model legislation, as well as scheme rules and implemented its own legislation and regulations from 1 March 2013.

Nine years after the review started:

- NSW is continuing with its separate regulatory approach. We believe NSW is still involved in the development of an ERAC EESS Inter-governmental Agreement (IGA)
- Queensland has implemented the new Electrical Equipment Safety Scheme (EESS), its national database and taken the lead to develop the IGA.
- Victoria had committed to being a part of the ERAC EESS but successive government changes have intervened and slowed the process of adoption. It is understood legislative instruments are before the Victorian government to complete the adoption.
- Other states and Territories are in various stages of transition to the new EESS scheme and NSW has a watching brief.
- An inter-governmental agreement has been in development for 3 years.

Lighting Council Australia, along with other industry bodies involved in the development of the ERAC EESS, such as the Australian Industry Group and the Consumer Electronics Suppliers Association, represent around 80% of the electrical product supply industry in Australia. These organisations support the development of the ERAC EESS as it will provide greater visibility of suppliers, consistent product marking requirements and more resources for monitoring, verification and enforcement activity.

Currently there are still multiple state electrical safety schemes in place and this is causing considerable confusion and additional regulatory burden for industry as well as a continued lack of compliance activity, and makes coordination difficult. Currently the operational outcomes rely on informal discussions between committed individuals in the different jurisdictions.

The present outcome is regulatory complexity with at least two sets of state based rules with different requirements and product marking that leads to market uncertainty and duplication of effort as both NSW and Queensland (with Victoria voluntarily managing) now have product databases. Industry and government all have higher compliance costs and consumers do not enjoy the benefits that a well-coordinated scheme with improved compliance funding could provide.

Industry supports the aims and objectives of the ERAC EESS and we encourage all efforts towards the completion and implementation of the ERACC EESS in all states and territories. This position has been expressed to several ministers, including the responsible NSW ministers.

Other issues

ACL enforcement resourcing

Lighting Council Australia would encourage more resources to be allocated to monitoring, verification and enforcement activities. Lighting Council has provided reports of non-conforming products to state consumer affairs agencies and there is no follow-up regarding the outcomes of investigations undertaken.

Reporting of compliance issues

It is often not clear which agency is responsible for investigating the different aspects of the Australian Consumer Law. It may be product related, ie a toy, a function of electrical safety laws or another regulation relevant to electrical equipment. We are unsure where to report non-conformance and especially the actions that should be expected after reports are submitted.

Industry reporting of product non-compliance

The least expensive method to identify non-conformance is via product marking and marketing information. Competent industry stakeholders are well aware of a product's detailed technical requirements and some of these are relatively easy to use to determine the likelihood a product's compliance compared to less informed regulators and consumers. Industry stakeholders consider that if a product is not marked correctly, then the manufacturer lacks a basic understanding of the product safety standard and compliance requirements. If they can't get such a simple safety and compliance aspect correct then the more difficult design and test aspects are also highly suspect. Further investigation by regulators via an audit process to determine whether the more difficult aspects are also an issue would be prudent. This can be achieved by regulators requesting suppliers' compliance information, such as product test reports. The level or quality of the suppliers' cooperation and information could help to determine the technical proficiency of a supplier and its products. This approach is likely to be a more efficient process than regulators selecting product or industry conducting product testing on competitor products.

Lighting Council Australia has provided reports of non-conformance to ACL regulators but we are not provided with feedback as to whether an investigation has been undertaken or the outcomes of investigations. We would appreciate feedback as this assists us to determine the level of resourcing that we should allocate to our compliance approach. If reports are acted upon then we will continue to provide reports to regulators. If reports are not acted upon then we would focus at a higher level on seeking sufficient regulatory prioritisation and resources to enable regulators to act on reports of non-compliance.

We know of regulators declining to take action against non-compliant suppliers because they are aware that a number of non-compliance issues on the same product have been raised with various other regulators (electrical safety regulators, ACMA on electro-magnetic compatibility) and they consider that another regulator will investigate the product and supplier.

Business to business

Lighting Council has engaged with the ACCC on business to business compliance claims. We have been advised that the ACCC focus is on consumers via the ACL and businesses has the expertise to properly consider claims.

This traditionally has been the case, at least in the lighting industry, as lighting products were provided via a highly stable, compliant (legacy) market. This has now changed significantly. The new lighting and controls technologies are described as disruptive technologies and the market is in rapid transition. New participants, increasingly complex and high performance light source technologies and controls are being used. Apparently simple issues such as product performance and life claims are increasingly difficult to verify, since multiple products and lengthy (9 months) test times are required. Even large businesses are being deceived by misleading claims from new participants in the market. Business drivers include the need to reduce costs which can be achieved by dual energy savings and taking advantage of the various state based energy saving schemes to replace older products with the latest technology.

About Lighting Council Australia

Lighting Council Australia is the peak body for Australia's lighting industry. Its members include manufacturers and suppliers of luminaires, lighting control devices, lamps, solid state lighting and associated technologies. Lighting Council's goal is to encourage the use of environmentally appropriate, energy efficient, quality lighting systems.

Yours sincerely

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