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Senate inquiry into non-conforming building products

Senate Economics References Committee

Master Electricians Australia submission



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Introduction

Master Electricians Australia appreciates the opportunity to contribute to the Senate inquiry into non-conforming building products.

Master Electricians Australia (MEA) is a dynamic and modern trade association representing electrical contractors. A driving force in the electrical industry and a major factor in the continued success and security of electrical contractors, MEA is recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. The organisation's website is: www.masterelectricians.com.au.

Below are our comments on the Inquiry's terms of reference that are of most relevance to the electrical industry.

The economic impact of non-conforming building products on the Australian building and construction industry

The Infinity cable recall revealed significant inadequacies in the way the recall of non-conforming products are handled in Australia. Fair Trading NSW was the first regulator to issue a recall of the dangerous cable in October 2013. It then took ten months for the ACCC to announce a national safety recall on 27 August 2014. Further to this, the recall on 27 August 2014 still excluded cable installed in "inaccessible areas" of a home. This ambiguity left electrical contractors in a difficult position with consumers wanting the cable removed and the contractor having no recourse for the time and expense involved in performing the work. Contractors had the choice to either absorb the costs involved to perform the work or refuse to do so and risk losing customer goodwill. Most electrical contractors also take their responsibility to the safety of their customers very seriously and could not in good conscience fail to act on the recall notices issued by the ACCC and state regulators. This is an ongoing issue for contractors who installed cable in what are deemed to be inaccessible areas and those contractors having an obligation to make attempts to remove it.

The Avanco isolator recall is a further example of the impact that non-conforming products can have on the financial viability of electrical contractors. The distributor of the faulty Avanco branded DC isolators, Advancetech, refused to recall the isolators after faults were identified. This then led to the Queensland Attorney-General's office announcing a mandatory recall. Soon after, the company went into liquidation and subsequently changed hands, trading under a different Director. This left electrical contractors in a difficult position with customers wanting the isolators replaced and the contractors having no immediate recourse to the distributor for the costs involved in performing this service for their customers. MEA is aware of at least four contractors who were forced to close their businesses due to the costs they incurred in replacing Avanco isolators. With 27,000 suspect devices sold by Advancetech in more than 13,000 properties across Queensland and New South Wales, many other contractors are sure to have suffered the same fate. Considering that the majority of electrical contractors are small businesses with tight profit margins, many cannot absorb the added costs involved and are themselves forced to go into liquidation. It is clear that the impact of non-conforming building products can be widespread and highly damaging to the electrical contracting industry.

The impact of non-conforming building products on workplace safety and any associated risks

The workplace safety risks are considerable in the case of non-conforming products. Faulty electrical products, in particular, represent a serious threat to the safety of tradespeople who may come into contact with these items while working in homes and buildings. The reality is that when a building product is identified as being faulty and made subject to a recall, the existing notification methods will not reach all of the purchasers of the product. This is particularly the case when the recall concerns products like electrical cable which are hidden from view in walls and ceiling spaces. Unknowingly having dangerous electrical products installed in a home not only risks the safety of the occupants themselves but also the safety of any tradespeople who enter high risk areas, like roof spaces, and have direct exposure to faulty electrical products.

The impact of non-conforming building products on costs passed on to customers, including any insurance and compliance costs

Direct costs

In some instances, contractors may not be in the financial position to remove and replace the product without charge, leaving the customer out of pocket for the work to be completed. This is a direct cost incurred by consumers as a result of non-conforming products.

Insurance costs

There are sure to be some homeowners who are aware that an electrical product installed in their home does not comply with the Australian standard and yet choose not to remove it. This could be a consequence of not having the time to engage a contractor, not understanding the danger associated with a faulty product or even consumers who have performed unlicensed electrical work and fear repercussions should they seek to replace the product. The consequences for this inaction could be serious not only from a safety perspective but also a financial one. Insurers will insure buildings based on an expectation that all electrical installations and equipment in the building comply with the relevant standards. If some of the wiring in the property does not comply with the standard and the insured does not disclose this as a materially relevant fact to the insurer and there is a subsequent claim arising out of, caused by, or contributed to by the defective cable, the insurer is likely to refuse to cover the insured on the basis of nondisclosure of a materially relevant fact.

Home re-sale issues

There could be serious financial repercussions for consumers who have faulty electrical products in their homes when they attempt to sell their home.

As mentioned above, some homeowners will not be aware that they have faulty electrical products installed in their homes. Should they decide to put their home on the market they could receive a nasty shock when a building inspector identifies the presence of the faulty item, such as electrical cabling. The owners will either need to arrange removal and replacement within a tight time frame or risk a sale falling through.

For homeowners who do action the recall of a faulty product, another set of problems could arise. In the case of Infinity Cable, the ACCC recall did not apply to the funded removal and replacement of cable located in the inaccessible areas of a home. Should these inaccessible

areas include the cable a sign must be attached to the switchboard notifying anyone to the presence of the cable. Informing potential buyers about the presence of dangerous cable is likely to deter many purchasers and make the property virtually unsaleable. Alternatively, it could cost the homeowners a large sum of money to pay a contractor to enter these inaccessible areas to remove and replace the cable.

These issues could also result in consumers who are wanting to sell their homes that contain faulty electrical products to “turn a blind eye” to the presence of the cable and hope that a building inspection doesn’t identify the items. This leaves the unknowing new owners at a great safety risk, particularly if they have assumed that any defects would have been found by a building inspector.

Possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards.

Electrical Equipment Safety System

MEA strongly recommends the full implementation of the Electrical Equipment Safety System (EESS) that has been developed by Electrical Regulatory Authorities Council (ERAC).

The current electrical equipment safety arrangements can work to protect consumers within particular jurisdictions, however they are deficient in many respects, including that they are reactive, are not pervasive in terms of covering the range of problem products, and are jurisdictional specific.

The Infinity cable incident is a prime example of the flaws in this kind of approach. The cables were identified deficient by third party manufactures rather than a systemic approach to ensuring product quality and consumer protection. Further, after the NSW Government removed from sale two of the three categories of Infinity product, other States only emulated this after considerable political and media coverage was gained on the matter. The ACCC only issued a full national recall on October 2014; ten months after NSW took action.

Infinity is just one of many examples where non-compliant electrical product has entered into Australia as is and sold without any checks and balances. In the absence of a national system, the Australian public is being exposed to the dangers of faulty imported electrical goods.

The EESS promises to be this national system with features including:

- A national database where all suppliers and certain types of electrical equipment must be registered prior to being offered for sale;
- Risk based classification of equipment with differing requirements for each level;
- A self-funding, user-pays system where registration fees fund improved compliance, surveillance and post-market enforcement activities.
- Registration of a ‘Responsible Supplier’, who is a manufacturer or importer of in-scope electrical equipment, is a legal entity in Australia or New Zealand and has the onus of responsibility for ensuring the safety of the electrical equipment they sell.

The EESS has commenced in Queensland and is being progressively implemented across Victoria, Western Australia, South Australia, Tasmania, Northern Territory and the Australian Capital Territory. Notably, the EESS is not being implemented in New South Wales. MEA is concerned that New South Wales is the only state in Australia that has decided not to implement the EESS. The system requires national consistency if the industry and community are to have confidence in both the enforcement of safety standards and the Regulator.

The recently signed Free Trade Agreements with Japan, South Korea and China have the potential to increase the quantity of faulty electrical equipment sold across Australia. It is critical that the NSW implement the EESS as a priority. We are optimistic that the outcomes of this inquiry will compel the NSW government to follow the lead of the other states and territories around Australia in the interests of product safety.

Other related matters

Non-conforming product safety recall strategy

A strategy needs to be put in place to minimise the impact of a non-conforming product safety recall both on the general public and the electrical industry. We propose the following:

1. Product tracking

It is imperative that manufacturers, importers and suppliers of all electrical equipment supplied in Australia have processes and procedures in place to enable the tracking and tracing of product which is found to be faulty and/or non-compliant to the relevant Australian Standards.

2. The introduction of a register of electrical products

Sellers of electrical products would be obliged to maintain a register of electrical products that require installation by an electrician. The register would be used to contact purchasers in the event of a product safety recall

Introducing a register would assist the regulator to identify the location of any equipment of this type that was later subject to a recall. This would facilitate a ready means to contact those at risk to ensure they take the steps to remove the product from their homes.

A mandatory system of this type would also provide more effective support to suppliers when they are required to withdraw unsafe or non-compliant product from the market.

Additionally, requiring purchasers to provide their details could act as a deterrent to those who are intending to perform unlicensed electrical work.

3. Mandatory recall insurance

Ideally, the manufacturers, importers & suppliers of faulty electrical goods would have a process in place to fund the removal and replacement of any faulty electrical equipment.

Unfortunately, this is not always the case with companies often going into liquidation after a product they have manufactured, imported or supplied is identified as being unsafe.

Mandatory recall insurance would give security to consumers that any faulty or non-compliant electrical products purchased are removed and replaced without delay.

Conclusion

MEA is optimistic that the above submissions will provide assistance to the Senate inquiry and we would be eager to participate further in any consultations that follow.

Yours sincerely,

Malcolm Richards
CEO

