



AUSTRALIAN INDUSTRY

GROUP

Ai Group Additional Submission

in response to the

*REVIEW OF ELECTRICITY (CONSUMER SAFETY) ACT 2004
ISSUES PAPER*

SEPTEMBER 2010

Additional Submission to the REVIEW OF ELECTRICITY (CONSUMER SAFETY) ACT 2004, ISSUES PAPER, APRIL 2010.

This Australian Industry Group (Ai Group) submission to the Review of the NSW Electricity (Consumer Safety) Act 2004 (hereafter referred to as *the NSW Act*) is in addition to and aligned with the main point of our original submission. That point being to need to ensure national consistency of the legislative requirements and practical application of those requirements.

This submission specifically focuses on Division 6, section 16 – Sale of electrical articles. Ai Group is of the view that section 16 is in need of review as it is inconsistent with other state legislation and regulation. Depending on the enforcement activity undertaken by Fair Trading officers citing section 16, *the NSW Act* is impractical for industry and does not recognise the processes and time frames involved with product development and standards development. As such it is imposing an unnecessary burden on businesses selling electrical equipment in NSW.

Ai Group makes an additional request of the NSW authority to review the approval status of classes of electrical equipment in conjunction with ERAC so that a consistent position is obtained across all Australian and New Zealand jurisdictions.

Section 16(1)(c)(i) & (ii) of *the NSW Act* is now enforced by the NSW authority to not allow the sale of an electrical article when a class or model specification changes, even though a valid approval may be held for a declared article. This is inconsistent with other Australian state electricity safety legislation, is causing difficulty for suppliers of electrical equipment to the NSW market and also seems to contradict the intention of Section 12 (2) of *the NSW Act*.

The Queensland Electrical Safety Regulation 2002 allows sale of an article on the Queensland market if it is approved, marked and meets the specification for that article **when the article was approved** (see Annex 2, section 100 (c)).

The Victorian Electricity Safety Act – 1998 allows the sale of a declared article if it is approved and marked (see Annex 3, section 57 (2)).

Ai Group would argue that this inconsistency between state electrical safety regimes is imposing an unnecessary burden on business. In some cases, electrical equipment that is able to be sold legally in all other states is not able to be legally sold in NSW. This situation, if left unchanged, may result in a large number of requests to NSW Fair Trading for exemption under Section 16(2) of *the NSW Act* for all types of declared and non declared electrical articles when electrical safety standards are amended or new standards published. These exemptions will need to be sought by businesses to try to obtain some level of surety in the process of selling electrical equipment onto the NSW market.

Section 12(2) of *the NSW Act* states, “A model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.” So a change in standard does not automatically cause an approval to be invalidated. Section 16(1)(c)(ii) states, “A person must not sell an electrical article if the article does not comply with... the model specifications (if any) for the article”. So a change in a product standard causes that product to not be allowed to be sold from the date a new product standard is published. These two sections of *the NSW Act* seem to be in conflict. Ai Group questions whether this contradiction is intended to remain as part of *the NSW Act* and if so, what purpose does section 12 (2) serve?

Ai Group asks for more surety to sell an electrical article in NSW over the full 5 year approval period. The Queensland Regulations offer this surety and Ai Group suggests that the QLD Regulations be viewed as a positive example to follow in this regard.

Ai Group suggests that a modification to the wording of Section 16(1) of *the NSW Act* would dissolve this inconsistency and would not undermine the power of the NSW authority to remove unsafe electrical articles from the NSW market. Ai Group proposes the following final wording of Section 16 (1)(c)(i) & (ii):

“(1)A person must not sell an electrical article if:

(c) the article does not comply with any one or more of the following:

- (i) the class specifications (if any) for the article, in force when the approval was granted or renewed,*
- (ii) the model specifications (if any) for the article in force when the approval was granted or renewed, ...”*

Ai Group points out that section 21, 22, 23 and 24 of *the NSW Act* will still allow the NSW authority to remove unsafe electrical articles from the NSW market. Also, section 13 will still allow the NSW Director General the discretionary power to cancel a model approval on the grounds that an article of the model is found not to comply with the model specifications for electrical articles of that model.

ABOUT AI GROUP

The Australian Industry Group (Ai Group) is a leading industry association in Australia. Ai Group member businesses employ around 750,000 staff in an expanding range of industry sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other related service industries.

In response to the *REVIEW*, Ai Group conducted industry consultations with members of our Electrical Appliances and Accessories Forum.

Electrical Appliances and Accessories Forum

Electrical Appliances & Accessories (EA&A) Forum addresses the technical and regulatory environment affecting supply of electrical appliances and electrical accessories through interaction with regulators and participation in standards bodies. This Forum is particularly focused on electrical safety, energy efficiency and environmental issues associated with appliances and accessories.

Annex 1 – Extract from the NSW Electricity (Consumer Safety) Act 2004

12 Duration of model approvals

- (1) A model approval remains in force for the period specified by the Director-General in the approval (not exceeding 5 years), subject to any cancellation or suspension of the approval or any extension or renewal of the approval in accordance with the regulations.
- (2) A model approval is not invalidated only because any specification applicable to electrical articles of that model has changed since the approval was given.
- (3) Nothing in subsection (2) requires the Director-General to approve, or renew or extend a model approval for, a model of electrical article that does not comply with a relevant class or model specification as in force at the time the approval is sought.

Division 6 – Sale of electrical articles

16 Electrical articles must meet certain standards before they can be sold

(cf 1946 No 13, ss 21A and 21DA)

- (1) A person must not sell an electrical article if:
 - (a) in the case of a declared electrical article--the article is not of:
 - (i) a model of electrical article that has a model approval, or
 - (ii) a class, description or model that has been approved or registered by the relevant authority for another State or a Territory, or
 - (iii) a model of electrical article that has been approved or certified under a recognised external approval scheme (being an approval or certification that is evidenced by marking on the article), or
 - (b) the article is not marked in accordance with the regulations, or
 - (c) the article does not comply with any one or more of the following:
 - (i) the class specifications (if any) for the article,
 - (ii) the model specifications (if any) for the article,
 - (iii) any other specifications prescribed by the regulations (if any) for the article,
 - (iv) any other requirements prescribed by the regulations (if any) for the article.

Maximum penalty:

- (a) in the case of a second or subsequent offence by a corporation--7,500 penalty units, or
 - (b) in the case of a first offence by a corporation--5,000 penalty units, or
 - (c) in the case of a second or subsequent offence by an individual--750 penalty units or imprisonment for 2 years, or both, or
 - (d) in the case of a first offence by an individual--500 penalty units.
- (2) The Director-General may, by order in writing and subject to such conditions, if any, as are specified in the order, exempt a person or persons of a specified class from the operation of any or all of the provisions of subsection (1).

Annex 2 – Extract from the Queensland Electrical Safety Regulation 2002

100 Hire or sale of electrical equipment of prescribed class

- (1) A person must not hire or sell an item of electrical equipment of a type of electrical equipment of a prescribed class of electrical equipment unless—
 - (a) for a sale of an item—the item has a Queensland approval or an external approval; and
 - (b) the item is marked—
 - (i) for an item with a Queensland approval—as required under this part; or
 - (ii) for an item with an external approval—as required by law governing the marking of the item in the external approvals entity’s jurisdiction; or
 - (iii) with a regulatory compliance mark; and
 - (c) the item is of a type of electrical equipment of a prescribed class of electrical equipment that complies with the safety requirements, electrical or otherwise, of

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the relevant standard for the type as in force when the Queensland approval or external approval was granted; and

- (d) if the item has a Queensland approval that is currently extended under section 103A—the item was manufactured before the application for the extension was made.

Maximum penalty—40 penalty units.

- (2) This section does not apply to the sale of second-hand electrical equipment.
- (3) In this section—

regulatory compliance mark means a compliance mark for an item of electrical equipment complying with AS/NZS 4417 (Marking of electrical products to indicate compliance with regulations) that is used to indicate that the item complies with this regulation.

Annex 3 – Extract from the Victorian Electricity Safety Act 1998 (incorporating amendments as at 1 Jan 2010)

57 Prescribed electrical equipment

- (1) Energy Safe Victoria, by notice published in the Government Gazette, may declare that any class, description or type of electrical equipment is, from a date specified in the notice, prescribed electrical equipment for the purposes of this Act.
- (2) A person must not supply or offer to supply electrical equipment prescribed under subsection (1) unless the equipment—
 - (a) is approved by Energy Safe Victoria and is marked as prescribed; or
 - (b) is approved by a prescribed authority or, under the regulations, is deemed to be approved; or
 - (c) is certified in accordance with a prescribed method or prescribed process.

Penalty: In the case of a natural person, 40 penalty units;

In the case of a body corporate, 200 penalty units.

- (3) If electrical equipment complies with the requirements of subsection (2)(b) or (c), it is deemed for the purposes of this Act to have been approved by Energy Safe Victoria and to be marked as prescribed.