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Review of Australia's Consumer Policy Framework
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2616

Dear Sir or Madam

I refer to the Productivity Commission's Review of Australia's Consumer Policy Framework and the findings of this review as they appear in the Productivity Commission's Draft Report. I am providing comment in relation to this draft report on behalf of the Electrical Regulatory Authorities Council (ERAC). This submission should be read in conjunction with the individual submissions from Australian States and Territories.

In Australia, technical and safety electrical regulatory functions are largely the responsibility of State and Territory Governments. ERAC is made up of representatives of the regulatory authorities responsible for electrical safety, supply and energy efficiency in New Zealand and the Australian States, Territories and Commonwealth (a list of current ERAC members is enclosed for your information). ERAC is the body which is responsible for the harmonisation of Australian and New Zealand electrical regulatory functions.

The principal objectives of ERAC are:

- Development of a policy framework that encourages and provides for coordinated regulatory development in each jurisdiction;
- Coordination of individual State/Territory/New Zealand program objectives and activities, to ensure uniformity wherever possible;
- Representation of ERAC's agreed policies at the national level for the purpose of securing support from Governments, industry and the public; and
- Active participation in policy and technical committees of organisations such as Standards Australia and Standards New Zealand to ensure that the content of national technical standards is consistent with regulatory directions and requirements.

ERAC recognises the clear links that exist between electrical safety and energy consumption efficiency approval processes administered by the Department of Environment, Water, Heritage and Arts. As a result, this Federal Department is

currently an ERAC member. ERAC would welcome other appropriate Australian Government Departments and Agencies contributing via ERAC to achieve a consistent, harmonised approach to electrical safety.

The following submission from ERAC, while reflecting the common views of the majority of members, does not preclude individual member States and Territories making their own submissions in relation to the Productivity Commission's Review. ERAC understands that a number of individual member States and Territories are putting in submissions on behalf of their respective Governments.

The Productivity Commission's Review of Australia's Consumer Policy Framework

ERAC is supportive of the rationale for the need to review Australia's Consumer Policy Framework. Further, ERAC supports (in principle) the Productivity Commission's Draft Report, which overall recommends having a new national generic consumer law, applicable to all consumer transactions.

ERAC is cognisant that when dealing with many consumer problems, it is generally preferable to employ generic law, rather than resorting to industry-specific regulation. However, and as recognised by the Productivity Commission in its report, generic laws will not always be sufficient to protect consumers and provide the right incentives to suppliers – hence industry-specific approaches are sometimes warranted. The Review of Australia's Consumer Policy Framework notes that:

Industry-specific consumer regulation explicitly seeks to prevent certain behaviours rather than rely on the deterrent effect of the threat of prosecution for breaches of general law and possible liability for compensation. Its use may be desirable when:

- *The risk of consumer detriment is high and/or the detriment suffered if things go wrong is potentially significant and possibly irremediable. (Such considerations are the primary reason why specific regulation is employed in the medical and consumer credit areas);*
- *The suitability and quality of services is hard to gauge before or even after purchase (the ostensible rationale for many other professional licensing regimes); and/or*
- *The technical nature of a product or service makes it easier for a regulator to assess breaches of appropriate behaviour against some 'objective' standards.*

(page 25, Volume 1, Review of Australia's Consumer Policy Framework)

ERAC contends that industry-specific regulation for electrical products safety is warranted, and necessary. Indeed, the case for industry-specific electrical product regulation meets the necessary criteria presented by the Productivity Commission, as outlined above. In the case of electrical products, there are significant risks associated with persons being killed or injured by electricity, and from property being destroyed or damaged by electricity. This meets the Commission's first criterion (listed above), where the risk of consumer detriment is high and the detriment suffered if things go wrong is most certainly potentially significant and possibly irremediable.

Table 1 – Electrical Incidents 2002 – 2006

Incident Type	Number of Incidents	Proportion - %
Electric shock	66	11
Fire	152	26
Component failure	261	45
Non-compliance	103	18

Table 1, above, illustrates a five year (2002 to 2006) electrical equipment incident summary compiled by ERAC across Australia and New Zealand. This table should be read with some caution as all electrical consumer equipment safety incidents may not have necessarily come to ERAC's attention. However, this Table does demonstrate that there are levels of risk associated with electrical products. The high risk of consumer detriment is further illustrated in Table 2, below.

Table 2 – Electrical Fatalities Involving Consumers' Equipment (Appliances and Accessories) in Australia and New Zealand

Year	Number of Fatalities
2002 – 2003	4
2003 – 2004	4
2004 – 2005	7
2005 – 2006	8

Table 2 illustrates the latest available data on the number of electrical fatalities involving consumers' equipment across Australia and New Zealand. While the incidence of electrical fatalities is relatively low when compared with the number of items of electrical equipment in use, the risk of consumer detriment remains high and the detriment suffered if things go wrong is potentially significant and possibly irremediable. Furthermore, there is substantial anecdotal evidence from Electrical Safety Inspectors and Fire Brigades across Australia that the incidences of fire associated with electrical equipment are increasing, particularly due to the increased use of plastics and the changing profile of marketplace supply.

Another of the criteria necessary listed by the Productivity Commission for industry-specific intervention is where the technical nature of a product or service makes it easier for a regulator to assess breaches of appropriate behaviour against some 'objective' standards. This criterion is certainly applicable to electrical products, and how they are currently regulated across Australia.

Regulations and Standards apply to all household equipment that is sold or offered for sale in Australia and New Zealand. Certain types of equipment, known as prescribed equipment (or declared articles), must also have a certificate of approval before they can

be sold in Australia or New Zealand under the current system. The list of equipment that must have a certificate of approval before sale is contained in Appendix E of the Australian/New Zealand Standard *4417.2:1996 Marking of electrical products to indicate compliance with regulations, Part 2: Specific requirements for electrical safety regulatory applications*. Once an item of equipment has a certificate of approval that allows it to be sold in one Australian State, Territory, or New Zealand, it can then be sold in other jurisdictions.

If the electrical equipment does not appear on the prescribed equipment (declared articles) list in AS/NZS 4417.2, a certificate of approval is not required before sale. However, each state, territory and New Zealand has legislative requirements that equipment must be safe before it is sold or used. *AS/NZS 3820 Essential safety requirements for low voltage electrical equipment* is the standard that is typically used to demonstrate compliance with legislative requirements.

The existing performance-based system, where regulators generally assess electrical products against objective Australian/New Zealand Standards, is well-suited to the technical and specialised field of electrical product safety. ERAC contends that moving away from an industry-specific regulatory approach would most certainly be to the detriment of consumers. For this reason, ERAC does not support Draft Recommendation 4.3 made by the Productivity Commission insofar as it applies to electrical safety products:

Responsibility for enforcing the consumer product safety provisions of the new national generic consumer law in all jurisdictions should be transferred to the Australian Government and undertaken by the Australian Competition and Consumer Commission.

ERAC believes that responsibility for electrical product safety is best placed within the existing state and territory regulatory authorities. These agencies currently have the industry-specific technical knowledge that is required to ensure appropriate interventions are made for consumer safety as it is affected by electrical products, delivering certain and effective consumer protection. Furthermore, the existing state and territory regulatory authorities also have the specialised knowledge and systems in place to perform effective and efficient electrical product safety enforcement activities. ERAC's position is further supported by a comment made by the Productivity Commission itself:

A number of sector-specific regulatory regimes also apply to more hazardous products – electrical goods providing an obvious example. The Commission's earlier review of Australia's consumer product safety system judged that these mechanisms deliver a reasonable level of product safety to Australian consumers.

(page 130, Review of Australia's Consumer Policy Framework, Productivity Commission Draft Report, Volume 2: Chapters and Appendices)

Furthermore, for the Australian Government to accept responsibility for national consumer protection, it would need to significantly increase the staff resources and budget of the ACCC, and set up expanded offices across all jurisdictions. The expense and staff recruitment challenge required would be daunting, and would duplicate existing expertise in States and Territories.

ERAC Review of the Electrical Equipment Safety System in Australia

As advised above, electrical equipment safety is the responsibility of State and Territory governments administered through local legislation, regulatory requirements and compliance interventions. Although minor inter-jurisdictional differences exist, the broad objectives are consistent. Emerging problems and challenges (as also identified by the Productivity Commission in its Review) have led regulators to collectively believe a formal and comprehensive review of the electrical equipment safety system is essential to providing a strategic direction for future regulatory policy. A review of the electrical equipment safety system will also maintain community, industry and other stakeholders' confidence in the integrity of the system.

ERAC agreed to undertake a review of the Electrical Equipment Safety System in Australia, and funding for the review was committed by member states. On the 15th of September 2006, the Ministerial Council for Consumer Affairs (MCCA) met to discuss a proposal for a review of Australia's Electrical Equipment Safety System and issued the following statement:

The Ministerial Council on Consumer Affairs supports a review by the Electrical Regulatory Authorities Council (ERAC) of the Electrical Equipment Safety System as it relates to consumer product safety subject to funding. The Ministerial Council on Consumer Affairs will consider any recommendations on completion of the review.

Since that time, ERAC has engaged a suitably qualified consultant to conduct the review and consult industry on the electrical equipment safety system. This review was completed in December 2007, and for further information the Final Report of this Review is enclosed.

Recommendations

The Equipment Safety Review recommends that the system should operate consistently across jurisdictions in a highly harmonised way, and should have the following components:

- Uniform rules for approvals/certifications and common external assessment of all organisations providing approvals/certification, including both regulators and third party product certification bodies.
- Remediating inter-jurisdictional inconsistencies, lack of clarity, time for processing applications and omissions.
- Enforcement arrangements, including surveillance and recall programs.
- National education.

In addition, the Electrical Equipment Safety Review also recommends implementing effective arrangements for the following:

- Ready identification and traceability of electrical equipment that is offered for sale.
- Local access to the expertise provided by regulatory agencies/authorities.
- Eliminating material market failures.

- Adopting a more performance-based risk management approach to electrical safety, especially in assigning conformity assessment requirements.
- Understanding and responding to diverse stakeholders.
- Alignment (or at least consistency) with the proposed National Consumer Product Safety Regime and existing and future mutual recognition and other trade agreements.
- Compatibility with the international context, utilising international/global models/approaches for regulatory control.
- Overcoming jurisdictional reach risks.

The new system is to be underpinned by nationally consistent performance-based legislation in each jurisdiction. Equipment will be classified into three levels based on risk assessment (with regular reviews of the need to reclassify equipment into a more appropriate risk level based on market experience).

Stakeholder Consultation

To assist with the review process, an Industry Working Group was formed. This Industry Working Group provided direct stakeholder input into the review. The Industry Working Group included representatives of industry associations, industry workers (contractors and unions), conformity assessment interests and Standards Australia.

During the course of the review, approximately 80 individuals representing a wide range of stakeholders were consulted with. They included:

- ERAC members;
- Industry, trade, professional and commercial associations;
- Individual manufacturers;
- Standards, accreditation, testing and certification interests;
- Unions;
- Consumers; and
- Retailers.

The Australian Electrical and Electronic Manufacturers' Association (AEEMA) are very supportive of the ERAC Electrical Equipment Safety Review.

Good Regulatory Practice

The recommendations made by the ERAC Review are consistent with Good Regulatory Practice (GRP), in particular the Technical Barriers to Trade Agreement of the World Trade Organisation and the GRP Guidelines developed by the Subcommittee on Standard and Conformance of the Asia-Pacific Economic Cooperation. These specifically include:

- The application of risk management techniques in the selection of regulatory measures, in particular the use of AS/NZS 4360: *Risk management*;
- The preference for performance-based legislation, rather than prescriptive legislation (ie specifying what has to be achieved, rather than how it is to be achieved);
- Acceptance of the principle of 'equivalence' of alternate regulatory arrangements (ie compliance with standards and conformity assessment processes that may be

different to those specified in regulations, but are deemed to give equivalent outcomes);

- The significance of the existence of voluntary standards and conformity assessment processes both as tools supporting regulations and as marketplace “grey letter law” (ie where the marketplace accepts voluntary standards and conformity assessment processes as de-facto law).

The recommendations made by ERAC’s review are also consistent with the GRP principles sources from the Organization of Economic Cooperation and Development (OECD) Guidelines, as outlined below:

- Minimum necessary to achieve objectives;
- Not unduly prescriptive;
- Accessible, transparent and accountable;
- Integrated and consistent with other laws;
- Communicated effectively;
- Mindful of the compliance burden imposed.

These OECD GRP are also referenced in the Productivity Commission’s 2006 review of Australia’s Consumer Product Safety System.

Implementation

Implementation of the recommendations made in the Final Report of the Review of the Electrical Equipment Safety System will be achieved by establishing a new Electrical Equipment Safety System. Equipment Safety Review has been endorsed by ERAC and an implementation plan is currently being developed. ERAC intends for this implementation plan to go to MCCA for formal endorsement at its next meeting in April 2008.

I have enclosed the Final Report of ERAC’s Review of the Electrical Equipment Safety System in Australia for your records. This Report will provide further information about ERAC’s Review. I trust this information is of assistance to you, however this report is being sent to the Productivity Commission in confidence. As it still has to be formally endorsed by MCCA, I request that this report in no way become a public document prior to its endorsement by MCCA.

Should you wish to discuss the matter further, or require further information, please contact Jordan Watts, Senior Project Officer on 07 3227 6210, who will be pleased to assist you.

Yours sincerely



PETER LAMONT
Co-ordinating Chair
Electrical Regulatory Authorities Council

01/02/2008