Australian Electrical and Electronic Manufacturers' Association

Consumer Electronics Suppliers Association

Joint Submission to

Review of the Australian Consumer Product Safety System

November 2004

INTRODUCTION

The Australian Electrical and Electronic Manufacturers' Association (AEEMA) is the peak industry body representing ICT, electronics and electrical manufacturing industries. Through its Electrical Division, AEEMA represents manufacturers and suppliers of a wide range of electrical product, including large and small appliances, electrical accessories and lighting.

The Consumer Electronics Suppliers Association (CESA) is the peak industry body representing Australia's consumer electronics industry.

Although some elements may also apply to other products, this submission is confined to comments on electrical product safety. Electricity is a dangerous commodity with considerable potential to cause death, injury and fire. Accordingly its supply and use are regulated. Electrical safety is a major preoccupation of AEEMA's Electrical Division and CESA. AEEMA, CESA and our respective members work closely with electrical safety regulators and in standards committees on electrical safety matters.

ISSUES TO CONSIDER

1. What, if any, are the major problems confronting Australia's consumer product safety system?

Australia's electrical product safety regime generally has served the country well. However as a consequence of globalisation and other factors a large and increasing quantity of electrical product is being imported. While most of this product is safe, AEEMA and CESA increasingly have become aware of product that fails to conform to electrical safety standards and is demonstrably unsafe. Most of this unsafe product is manufactured in developing countries where technical standards and conformance infrastructures are immature, and originates from suppliers who lack an understanding of Australia's regulatory requirements.

Electrical safety is regulated in Australia by the states and territories. The increased importation of unsafe electrical product has coincided with a reduction in resources available to electrical safety regulators. This has affected in particular the enforcement regime. In addition to having inadequate resources to enforce electrical product safety, regulators have failed to evolve a truly national system of regulation.

The Discussion Paper states that a major challenge facing Australia's consumer product safety regulatory system is the need to deal more swiftly and less reactively with emerging product safety problems. Electrical safety regulation is a classic example of this problem.

Since July 1993, AEEMA has advocated more effective action by regulators to ensure that unsafe goods do not enter the market. The Association participated in writing the joint Australia and New Zealand standard AS/NZS 3820 'Essential Safety Requirements'. Since its publication AEEMA and CESA have been pressing regulators to take more effective action so all electrical products entering the Australian and NZ markets meet the requirements of this standard.

Most action by regulators is focused on approvals of declared articles, a specific group of products deemed to require mandatory type testing and approval of each model before sale. Regulators recognise the need for extension of type testing to all products and to increase surveillance to ensure that products put on the market conform to type. However, even though AS/NZS 3820 was published several years ago, and despite continual follow up by AEEMA, the coordinating body for the state and territory regulators – the Electrical Regulatory Authorities Council (ERAC) - has taken no effective action since then and is yet to decide what action it will take regarding extending type testing to all electrical products.

Several years ago, AEEMA prepared a vision plan aimed at eventual use of the Regulatory Compliance Mark as specified in AS/NZS 4417.1 and AS/NZS 4417.2 on all electrical products. It required industry to type test both declared and non-declared products and surveillance and enforcement by regulators. This plan was submitted to ERAC and it was accepted as a joint vision at that time. However, since then some elements of the plan have become obsolete. For several years, the plan has been suspended pending revision by ERAC. Despite continual pressure from AEEMA, no progress has been made on either updating that plan or preparing an alternative for consideration by industry. Lack of resources would be one factor in regulators' reluctance to act.

Additional difficulties arise because some essential powers, particularly controls on imports, reside with the Australian Government and cannot be applied by State regulators.

The combination of the following factors:

- Increased electrically unsafe product entering the country;
- Insufficient resources available to state and territory regulators to monitor and enforce regulations;
- The inherent difficulty of coordinating the activities of eight state and territory regulators, all operating in different legal regimes; and
- ERAC's manifest inability to plan future improvement of the regime

presents a cause for real concern and increases the risk of accidents from electrical equipment.

2. How should governments address these problems?

Option 1

The best option would replace state and territory laws with an Australian law that is complementary to Part 5A of the Trade Practices Act.

The current state and territory electrical safety regulators, together with their coordinating organisation ERAC, should be replaced with a National Electrical Safety Regulator whose responsibilities are coordinated with the responsibilities of the ACCC to provide a seamless but not overlapping safety system for electrical equipment.

Option 2

Failing the establishment of a single national electrical safety regulator – and recognising that the states and territories may be unlikely to relinquish their powers to regulate in this area – electrical product safety regulation should be subject to the jurisdiction of a Ministerial Council.

The Ministerial Council would determine the policy implemented by legislation. Identical legislation should be enacted in all states and territories with uniformity maintained by 'template' legislation as described in the Discussion Paper. As with the national regulator alternative described above, the template laws for electrical equipment should be complementary to Trade Practices Act requirements in providing a seamless system with no overlaps between the ACCC and the state regulators.

With this alternative proposal, a more effective statutory body consisting of representatives of state, territory regulators and chaired by an Australian Government representative would replace ERAC. It would provide information and advice to the Ministerial Council and develop uniform regulations and administrative guidelines to effect the template legislation. It would also coordinate and monitor activities of the state and territory based regulators. It would be supported by Australian Government staff.

Key objectives of the body that replaces ERAC would include transparency and uniformity of processes and outcomes in all jurisdictions.

Recalls

With either of the proposals above, or any alternatives ultimately adopted by government, all Australian recall provisions (including voluntary recalls) should be reported to, monitored by and enforced by a singe Australian Government agency.

3. Would a General Safety Provision be of benefit to Australia's consumer product safety system?

AEEMA and CESA doubt whether a GSP would be justified. If a GSP were to be considered, we offer the following comments.

a) The majority of electrical goods are imported. Local manufacturers are exporters as well as suppliers to the local market. Hence, the international context must be considered when provisions of any GSP are determined. All product requirements must be practicable internationally. No mandatory provisions of any GSP can infringe WTO rules.

b) Any GSP provisions or sanctions that may apply under Australian law must be equally applicable to competing importers as well as local manufacturers. It should be noted that overseas manufacturers who largely determine safety of imports may not be accessible under Australian law.

c) Part 5A of the Trade Practices Act already includes a proven principle by which to determine whether or not a product is safe. Goods are safe if they 'provide the level of safety which persons generally are entitled to expect'. When applying that principle, the Act also requires that 'all relevant circumstances be taken into account' and lists several criteria specifically. This defines the level of safety that is required of products in Australia under the TPA. Requirements of any GSP must be consistent with the TPA. Hence any GSP regime should apply the TPA principle for determining whether a product is safe.

d) Ensuring that their products are safe as defined in Part VA of the TPA entails a number of preventative actions by suppliers. A summary is outlined in Part 4, 'Steps to comply with Product Safety Laws' of *When Goods are Defective – A Guide to the Product Liability Provisions of the Trade Practices Act* published by the then Trade Practices Commission in 1993. (The quotes in the paragraph above are from the same publication.) Effective prevention is best achieved through quality systems that integrate preventative action with suppliers' operating procedures. A GSP may improve the incentive for local manufacturers and importers to implement or improve systems to assure the safety of their products but, perhaps, with no more effect than could be achieved by applying existing Part 5A requirements and safety regulatory powers more proactively.

4. If a GSP were to be introduced, how should governments address any concerns you may have?

By close consultation with AEEMA and CESA, commencing with initial design of the concepts to be applied and continuing through to the preparation of the Bills, Regulations and Administrative Guidelines required to implement a GSP.

5. What products/services should be exempt from a GSP and why should they receive an exemption?

Assuming that a GSP is implemented, none come to mind.

6. How could a GSP be applied to businesses? For example, what level of safety should businesses be held accountable for under a GSP and to what extent should GSP obligations be placed on businesses throughout the product supply chain?

As stated above, the level of safety should be that already specified in Part 5A of the TPA The primary focus should be on suppliers of products to the market but, where a safety hazard or a nonconformity to an applicable safety standard is detected on products further down the product supply chain, the existing deemed 'manufacturer' provisions of Part 5A should apply.

7. Should services be covered by the TPA product safety provisions? If so, would you adjust the existing product safety provisions in any way to account for the regulation of services?

Provision of services is not a primary function of AEEMA and CESA members, so others would have a greater stake in this area. However, where provision of defective services causes death, injury or property damage, it appears reasonable to include such services within the ambit of the TPA.

8. How should the regulation of consumer product safety be altered to provide for second-hand goods?

Ideally, all second hand electrical goods should be tested to AS/NZS 3760 'In-service safety inspection and testing of electrical equipment'. This would be aimed at determining whether the safety protection features of the equipment are functional prior to resale. However, the number of resellers is large and they range from persons holding garage sales to companies that recondition products. Resellers may or may not hold licences to deal in second-hand goods. Surveillance and enforcement of regulations for second hand electrical goods would be formidable tasks and, where surveillance and enforcement resources are limited, the benefits of regulation may be insufficient to justify allocation of the resources required..

An issue of concern is the importation of second hand electrical goods. While they may once have complied with requirements in another country, there is no requirement to test them against local requirements. There is a real possibility that this regulatory gap could result in the importation of product that does not comply with the relevant Australian or New Zealand safety standard.

AEEMA and CESA have no data on the extent of injury caused by second hand goods with safety defects.

9. Are consumers receiving sufficient product safety information? How should such information be delivered to consumers?

One of the relevant circumstances for determining whether a product is defective under part 5A is the adequacy of 'any instructions for, or warnings with respect to, doing or refraining from doing, anything in relation to them.'

Customers receive sufficient product safety warnings and information if suppliers take proper account of this provision.

In effect the provision gives notice that goods are defective if injuries occur because warnings and instructions are insufficient. Details of what suppliers should do to ensure that their warnings and instructions are adequate are presented in Part 4: 'Steps to take to comply with the product safety laws' in the TPC publication quoted in comment 3(d) above.

More active promotion of Part 5A requirements regarding warnings and instructions would improve product safety.

10. Should businesses be required to report unsafe products to governments?

Not to any extent greater than already applies. Our reasons are as follows.

(a) Initial reports of potential safety problems are usually imprecise. The causes, degree of hazard and the numbers and models of products are unknown. By the time those matters have been investigated and resolved, .the supplier concerned is most of the way towards deciding whether a voluntary recall is necessary. With existing legal provisions, voluntary recalls must be advised to government. Hence, in most instances, the effect of requiring businesses to report unsafe products would merely require suppliers to report cases where the suppliers have determined that their products are unsafe but have not yet decided to make a voluntary recall. That is quite a narrow window for provision of information. It would be difficult to enforce on irresponsible suppliers who may nullify the obligation by not investigating problems diligently and therefore fail to determine that their products are not safe. In that event, the regulator could only apply sanctions if the regulator has determined that the product is unsafe by other means. In this scenario, mandatory reporting of unsafe products would not achieve much in the way of improving the safety of products supplied by irresponsible manufacturers or importers.

(b) Product liability insurance would be more expensive or even impossible to obtain if it became mandatory for information on unsafe products (or potentially unsafe products) to be disclosed to parties other than suppliers' legal advisers and insurers. Additional cost of liability insurance would eventually be passed on to the community. Where insurance is not obtained, financial resources may not be available to redress injury to persons caused by unsafe products.

(c) If a supplier provided information to government on products that might be unsafe and this information became accessible to competitors - because confidentiality was not assured or through leaks from a government agency - those competitors could make mischievous use of the information with severe consequences for the supplier.

(d) An alternative approach to information gathering that would avoid the problems above would be available if government established a database and an expert analysis unit as recommended in our answer to question 12 below.

11. What type of product safety early warning systems should be developed in Australia?

See answer to question 12.

12. Do you favour the development of a centralised electronic data base to achieve product safety goals? How would the type of data base you envisage contribute to product safety outcomes?

Yes.

Australia needs a single national database in which products associated with deaths, personal injuries and property damage are recorded. This should include references to all instances where products are associated with an injury, even when they are not necessarily causative agents, to avoid exclusion of potentially useful data when premature decisions are made as to the causes of injuries.

Ideally, the database would contain information that would enable original records of incidents to be traced for retrieval from the source when needed for more detailed analysis of the causes of injuries.

The new database might be established by coordinating data from all existing databases that contain pertinent data and filling the gaps then apparent.

The database should interconnect data on personal injuries, usually obtained from hospitals, and property damage, usually obtained from fire investigators. Other sources such as coronial inquiries should also be used.

An analysis unit that supports the database should identify problems apparent from the macro data that have become apparent to the regulator/s from other sources. It should also gather supplementary data on problems identified from the macro data or the regulator/s, and analyse the available data rigorously to provide accurate, timely and transparently derived information on the incidence and causes of those problems.

An edited version of the database that excludes all information that would enable identification of the supplier of products should be accessible to all stakeholders, particularly suppliers where this would assist them in determining whether any of their products are unsafe or where the safety of their products could be improved. Access would also be useful to members of standards committees when reviewing safety standards.

13. What type of product safety research would be beneficial?

Research into the characteristics of the database to enable it to be used most effectively.

14. Should the TPA make provision for an Australian Government recall audit power?

Yes.

15. What difficulties are consumers experiencing in relation to obtaining redress for product safety problems?

At present, AEEMA and CESA have no information to assist in answering this question but are willing to investigate any general issues affecting electrical goods.

16. What is the best approach to achieving harmonisation of product safety legislation and enforcement?

See response to Question 2.

OTHER ISSUES

New Zealand and the Review

Regulations affecting the safety of electrical products are not exempt from the Trans-Tasman Mutual Recognition Agreement. Hence, to the greatest extent possible, Australian and NZ regulatory requirements affecting electrical goods should be the same. We therefore suggest that NZ be invited to participate, or at least be consulted, on this review and any legislative changes, regulations and administrative guidelines that are made as an outcome of the review.. NZ participates in Ministerial Councils. It also is represented on ERAC and the electrical safety standards are joint standards.