

Regulatory Impact Statement

Electricity (Consumer Safety)

Regulation 2015

June 2015





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The Consultation Process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this Regulatory Impact Statement. Matters covered by the Principal Act are not the subject of this consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is all about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

The closing date for submissions is 24 July 2015.

Email submissions to: policy@finance.nsw.gov.au

Postal submissions to:

Electricity (Consumer Safety) Regulation 2015

Policy and Strategy

NSW Fair Trading

PO Box 972

PARRAMATTA NSW 2124

Additional copies of the Regulatory Impact Statement and the draft Regulation can be downloaded from www.fairtrading.nsw.gov.au.

Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

Confidentiality of Submissions

The consultation process is public and open. All submissions received will be published on the NSW Fair Trading website. Requests for submissions to be treated as confidential must be accompanied by supporting reasons, and will be considered in the light of Government principles and requirements relevant to the public release of, and access to,



information, including those established by the *Government Information (Public Access) Act 2009*. Automatically generated confidentiality statements in emails are not sufficient.

If the proposed Regulation is made, a copy of all written comments and submissions received will be provided to the Legislation Review Committee of Parliament.

Identified Stakeholders

The Regulatory Impact Statement has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 3.

Evaluation of Submissions

NSW Fair Trading will review all submissions received and based on this review, the proposed Regulation may be amended as appropriate. If required, further targeted consultation may be undertaken.

Commencement of the Regulation

After the Regulation has been finalised, it will be submitted to the Governor for approval. Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au

It is proposed the Regulation will commence on 1 September 2015, when the existing Regulation is due to be repealed.



Objective and Rationale of the Regulation

Objective

The *Electricity (Consumer Safety) Act 2004* (the Act) requires, encourages and promotes the supply of safe electrical articles (consumer appliances and electrical equipment) and safe practices for electrical wiring work in residential, commercial, industrial and agricultural environments.

The Act:

- provides the statutory basis for determining the electrical equipment to which the legislation applies;
- sets the criteria that must be met before electrical articles may be sold;
- prohibits the sale of electrical articles which do not meet specified criteria;
- sets minimum standards for work on electrical installations which convey electricity at above extra low voltage;
- sets out the responsibilities of owners and occupiers of places in relation to electrical installations;
- provides inspection, investigation and reporting powers in relation to the Act.

The primary objective of the Electricity (Consumer Safety) Regulation 2015 (the Regulation) is to provide the legislative support and administrative detail for the operation of the Act. The Regulation will:

- provide a mechanism to approve safe electrical articles;
- set out the requirements for electrical installation work and testing; and
- prescribe the forms, fees and penalty notice offences for the purposes of the Act.

Rationale

It is necessary to remake the Regulation at this time because:

- under the sunset provisions contained in the *Subordinate Legislation Act 1989*, the current Regulation will be automatically repealed on 1 September 2015 if it is not re-made
- it provides the administrative detail necessary for the proper functioning of the Act.



Options for achieving objectives

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the *Electricity (Consumer Safety) Act 2004*.

The options for achieving the objectives of the Regulation are:

Option 1

Maintain the status quo – Do not make the proposed Regulation, and instead re-make the Regulation to be identical to the existing Regulation.

Option 2

No action – Allow the existing Regulation to lapse under the sunset provisions of the Subordinate Legislation Act, and do not make any replacement Regulation.

Option 3

Make the proposed Regulation – The provisions of the Regulation would provide the legislative support and administrative detail for the *Electricity (Consumer Safety) Act 2004*.



Impact Assessment of Options

Assessment of Option 1

Maintain the status quo.

Option 1 - Costs

The costs associated with this option are the same as the costs that currently exist and are considered to be medium level costs. These include regulatory requirements for the marking and approval of electrical articles and regulatory requirements for standards and safety testing of electrical installation work.

Option 1 - Benefits

The key benefit of this option is the provision of a regulatory framework that ensures electrical articles and electrical installations are safe for consumers. This is considered to be a high level benefit.

Option 1 - Conclusion

The costs and benefits of this option remain the same as they currently exist. Remaking the 2006 Regulation without amendment would largely meet the objectives of the Act. However, it would be an opportunity lost to make some relatively minor changes to ensure the Regulation is supporting the Act's objectives as efficiently and effectively as possible.

Assessment of Option 2

No action.

Option 2 – Costs

Under this option, the Regulation will lapse and consumers will not be given the protection afforded by a statutory regulatory framework. It is possible that consumers may suffer a decrease in safety standards due to the removal of the protections found in the Regulation. Electrical tradespersons would also be exposed to greater safety risks, due to the lack of regulation of electrical articles. If the requirements of the current Regulation are removed, tradespersons will have many safeguards removed that prevent dangerous and unstable electrical goods from being used.



Electrical articles that are approved in New South Wales are recognised across Australia. Should the Regulation lapse and the approval become invalid, producers of the electrical articles may need to seek approval from other states, which could incur additional costs.

The Government's regulatory responsibilities would continue under the principal Act but this role would be made virtually impossible by the lack of administrative detail in the Act. This would impose a substantial financial cost on the Government.

The costs of this option are considered to be high.

Option 2 - Benefits

The benefit associated with this option is a removal of the regulatory burdens imposed on the electrical industry. This benefit is experienced only by suppliers of electrical articles and businesses that carry out electrical installation work and is considered to be low.

Option 2 - Conclusion

Taking no action would result in the existing Electricity (Consumer Safety) Regulation 2006 being repealed on 1 September 2015, with no replacement Regulation being made. While the principal Act would still exist, a number of provisions would be unworkable and the objectives of the Act could not be achieved. It would not be possible to give effect to the intention of the Act without some further action by the Government, such as amending the Act. Enshrining the proposed requirements of the regulation in the Act would reduce the capacity to amend the requirements quickly to respond to problems which may arise for consumers or to address changes in industry practices.

Assessment of Option 3

Make the proposed Regulation.

Option 3 - Costs

The costs associated with this option are mostly the same as the costs that currently exist and are considered to be medium level costs. These include regulatory requirements for the marking and approval of electrical articles and regulatory requirements for safety standards and testing of electrical installation work. The draft Regulation does have an added financial cost of introducing an application fee for a model approval extension, however this cost reflects the administrative cost incurred by Fair Trading in processing the extension application. The changes in the draft Regulation



are not significant and do not result in any substantial increase in costs to consumers, industry or the government in comparison to the existing Regulation.

Option 3 - Benefits

The key benefit of this option is the provision of a regulatory framework that ensures electrical articles and electrical installations are safe for consumers. This is considered to be a high level benefit. The changes in the draft Regulation aim to achieve this more effectively and efficiently by making some minor changes to the Regulation.

Option 3 - Conclusion

This option provides the benefits of the existing legislation while making some minor changes that further the objects of the Act in a more effective way and do not impose any unnecessary financial or administrative burdens on the industry or the government.

Summary of Costs and Benefits for each option

Option	Likely Costs	Likely Benefits	Overall Benefit
Option 1	Medium	High	Positive
Option 2	High	Low	Negative
Option 3	Medium	High	Positive

Preferred Option

Option 3, making the proposed Regulation, is the preferred option. This is the option which provides the greatest benefit and the least cost to industry and the community.



Discussion of the Proposed Regulation

A summary of the changes to the Regulation and their relevant clause numbers is provided in Appendix 2. Submissions are welcome on any aspect of the draft Regulation or any other relevant issue, whether or not raised in this Regulatory Impact Statement. However, the following discussion points provide greater context for some provisions in the draft Regulation and explore some regulatory options for these provisions.

Date of Commencement

The draft Regulation provides for commencement on 1 September 2015.

Issue

This commencement date has been chosen in order to give industry the maximum amount of time possible to adjust to the new laws while taking into consideration the automatic staged repeal of the existing Regulation.

Question

1. Is 1 September 2015 an appropriate start date for the new laws? If not, why, and when should the new laws start?

New offence for interference with electrical installations

Part 3 of the Regulation will introduce a new offence for anyone that interferes with electrical installations in a manner that affects the safety of the installation.

Issue

There is currently no obligation for people providing services or undertaking work where there is an electrical installation to ensure their services or work are carried out in a manner that maintains the integrity and safety of the electrical installation. A number of fires have occurred in homes across NSW where installers of home insulation did not carry out work in line with Australian standards. The fires occurred where the insulation covered in whole or part, the electrical installation and, in the majority of cases, the fires required intervention by Fire and Rescue NSW.



Questions

2. Does the wording of this offence adversely impact any other industries?
3. Does the maximum penalty amount appropriately reflect the seriousness of the offence?

Notification of results of safety and compliance tests

The Draft Regulation will clearly stipulate that the person who conducts the safety and compliance check for an electrical installation (the tester) is required to give the results of the test to the person for whom the installation work was carried out within seven days. The current regulation provides for 14 days. If the person for whom the work was carried out is not the owner of the property, the tester must give the test results to the owner or the owner's agent.

Issue

It is necessary for the Regulation to clearly indicate who has responsibility to give the notice to the relevant parties. Fair Trading has found that there is a degree of confusion within the industry concerning who the 'responsible person' is, resulting in non-compliance with the requirement to complete and lodge the notice. There is also a different meaning for the term 'responsible person' in the Act, which creates further confusion. Accordingly, the Regulation should clarify that the tester is the person responsible for giving the test results to the relevant parties and keeping a record of the test results for five years.

Under the current Regulation, notice is required to be provided to the owner of the property or to the occupier if the occupier is one of the parties who agreed or arranged for the relevant installation work to be carried out on the installation. The National Electrical and Communications Association has advised Fair Trading that it is sometimes difficult to determine who the owner is, for example, when work is being carried out on a multi-storey building or on a housing complex. In these cases, it may not be clear who the owner is and the occupier may not necessarily have arranged for the work to be carried out. The proposed change would simplify the notification process for the tester and provide consistency with the section 15 of the *Plumbing and Drainage Act 2011*.

Questions

4. Is seven days sufficient time to give notification of the test results?
5. Does the proposed change to the Regulation eliminate confusion as to who is required to give notice of the test results?



6. Should the tester be responsible for keeping records of tests they conduct for five years?
7. Does the proposed Regulation eliminate confusion as to who the notice must be served on?

Application fee for model approval extension

The draft Regulation introduces an application fee of \$459 for processing an application for a model approval extension.

Issue

To process and review an extension for a model approval, Fair Trading is required to take the same steps it would when approving an application for renewal. Accordingly, an application fee equal to the renewal application fee will be required to recover the costs of processing the application.

Questions

8. Is an application fee for an extension model approval appropriate?
9. Is the \$459 fee appropriate?

Requirement for application for extension of model approval

The Draft Regulation now specifies that an extension for a model approval can be made by application and now prescribes the form and content of the application.

Issue

The current Regulation does not clearly indicate how applications for extension model approvals are to be made. In practice, applicants contact Fair Trading directly who inform them what information is required. This process is inefficient and delays processing times. Accordingly, the draft Regulation will require applications to be made in the form approved by the Director-General.

Questions

10. Is prescribing the model approval extension application process appropriate?
11. Should anything else be included in the prescribed process?



Prescribed application fee for external approval scheme

The Draft Regulation specifies the fees payable for the application, renewal and assessment of external approval schemes.

Issue

The current Regulation does not set out the fees charged by Fair Trading regarding external approval schemes. Currently, Fair Trading charges recognised external approval schemes a fee of \$3,500 for an initial application, \$2,000 annual renewal and \$152 per hour or part thereof, for assessment of the scheme (which may include an inspection of the premises and examination of documentation in relation to the schemes approval processes).

Prescribing the fees in the Regulation will provide for transparency of the fee setting process – all stakeholders can see what the fees are, and the fees are subject to governmental approval by the Minister and Executive Council. It will also provide for an annual CPI increase.

Question

12. Are these fees appropriate?

Timeframe for application for renewal of model approval

The Draft Regulation will remove the requirement for model approval renewal applications to be lodged between one and three months prior to the approval expiring. Applications will only need to be lodged one month prior to approval expiring.

Issue

The requirement that model approval renewal applications be lodged between one and three months prior to the approval expiring is unnecessarily restrictive.

Question

13. Is the application timeframe for model approval renewal appropriate?

Penalty increase for certain offences

The Draft Regulation increases the penalty notice amount for offences under sections 16(1)(a) and 16(1)(c) of the Act from \$500 to \$1,000. These offences relate to the sale of electrical articles that have not been approved or do not comply with wiring rules.



Issue

The current Regulation provides the same maximum penalty notice amount for the above offences as for the sale of electrical articles that are not marked in accordance with the Regulation (an offence under section 16(1)(b) of the Act). The offences listed above are of a more serious nature, which should therefore be reflected in the maximum penalty notice amount for the offence.

Question

14. Is \$1,000 an appropriate penalty notice amount for an offence under sections 16(1)(a) and 16(1)(c) of the Act?



APPENDICES



Appendix 1 - Background Information

The minimum safety standards for electrical articles (electrical appliances and equipment) and electrical wiring are regulated by the *Electricity (Consumer Safety) Act 2004*. There are approximately 32, 800 electrical contractors and 30, 700 qualified supervisors licensed in New South Wales¹.

The essential policy objective of the Act is to provide for the safe use of electricity by consumers in NSW – that is, to ensure electricity is used in a manner which is safe and poses no unnecessary risk to life and property.

The legislation sets out the regulation of consumer electrical articles – electrical appliances and equipment. An electrical article is defined in the Act as “any appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical equipment intended or designed for use in, or for the purposes of, or for connection to, any electrical installation.”

The Act sets out the obligations for all parties regarding the standard of electrical work and the maintenance of electrical installations. This includes obligations on the owners of electrical installations. People who own and use electrical installations have a responsibility to themselves, their families, neighbours and the wider community to ensure, to the best of their knowledge and ability, that the installation is safe.

An electrical installation is defined in the legislation as any fixed appliances, wires, fittings, apparatus or other electrical equipment used for (or for purposes incidental to) the conveyance, control and use of electricity (supplied from a network) in a particular place.

Excluded from the installations regulated under the legislation is any electrical equipment used for the generation, transmission or distribution of electricity that is owned by an electricity network or situated in a location owned or occupied by a network. Also excluded is electrical equipment in or about a mine. Such equipment is separately regulated under industry-specific legislation.

The legislation also allows for other electrical equipment to be excluded from the legislation by the regulations, where appropriate.

¹ As at 5 August 2014



To protect consumers, the policy objectives of the Act and the Regulation are achieved by the following:

- providing a mechanism for prescribing and enforcing appropriate minimum safety standards for electrical articles (electrical appliances and equipment) and electrical wiring. For certain high risk items, the enforcing of minimum safety standards is further enhanced by a requirement for these items to be tested, approved and marked before they may be made available to the public. These goods are high risk because consumers and people with no specialist electrical training have high levels of exposure to them. This includes items such as household appliances, mobile phone chargers, electric lawn mowers, extension cords and safety switches, which we take for granted are safe to use
- providing powers to inspectors to check electrical articles supplied by retailers and wholesalers to ensure compliance with the mandated safety standard requirements
- creating a power for the Director-General to compel the supplier (retailer or wholesaler) of an electrical article to provide evidence that the item is safe
- creating a power for the Director-General to prohibit the sale of certain unsafe electrical articles
- Mandating the reporting of accidents involving electrical items and installations and providing appropriate investigation powers for government inspectors. These powers ensure potential dangers are identified
- specifying that installation owners have an obligation to maintain their installations in a safe condition. This includes installations connected to a network as well as so-called 'stand-alone' installations which are not connected to a network.

Copies of the Act and current Regulation can be viewed or downloaded from:

www.legislation.nsw.gov.au



Appendix 2 - Summary of the proposed changes

Part/Clause	Proposed Change
Clause 7 Extension of model approval and Schedule 2 Applicable fees	Require that extension applications must be in the approved form and be accompanied by the applicable fee. The fee is now listed in Schedule 2 and is the same amount as an application for renewal of model approval (clause 8(3)(c)).
Clause 8 – Application for renewal of approval	Removal of the words “no earlier than 2 months”. This means approval renewal applications no longer need to be made between one and three months prior to approval expiring.
Clause 18 – Relevant authorities of other States and Territories	Clause 18 to be updated with the current names of relevant authorities, with the exception of Victoria (which remains the same): (a) the Electrical Safety Office, Department of Justice and Attorney-General in Queensland, (c) the Office of the Technical Regulator, Department for Manufacturing, Innovation, Trade, Resources and Energy in South Australia, (d) Worksafe Tasmania, Department of Justice in Tasmania, (e) Energy Safety, Department of Commerce in Western Australia, (f) NT Worksafe, Department of Business in the Northern Territory, (g) the Construction Services Branch, Planning and Land Authority in the Australian Capital Territory
Clause 19 – Declaration of recognised external approval schemes	Require applications to be a recognised external approval scheme to be in the approved form. The fees for an application that are currently charged will be included in Schedule 2. These fees are: <ul style="list-style-type: none"> • \$3,600 initial application fee; • \$2,065 annual renewal fee; and



and Schedule 2 Applicable fees	<ul style="list-style-type: none"> actual cost of annual assessment of the scheme charged at an hourly rate of \$156 per person.
Clause 34 – Notification of results of safety and compliance tests	Clarification that notification of test results must be given by the tester to the person for whom the work was carried out within seven days. If the person for whom the work was carried out is not the owner or owner’s agent, that person must give the test results to the owner or owner’s agent within seven days. The tester must keep records of tests conducted for five years.
Clause 34 – Responsible person	Any person engaged by the owner or occupier of an installation to provide, or arrange for the provision of, electrical installation work (previously known as the responsible person) is now referred to as the electrical installation work provider .
Clause 37 – Notifiable serious electrical accidents: section 33 of Act	Clause 37(2)(c) amended to “by telephone to NSW Fair Trading, Department of Finance, Services and Innovation”. Note, Clause 37 has been renumbered to Clause 39.
Clause 38	New clause 38 inserted requiring any person carrying out work near an electrical installation to ensure their work does not interfere with the electrical installation in a way that adversely affects the safety of the installation. The maximum penalty is 500 penalty units for a corporation and 200 penalty units for anyone else. This offence is also a prescribed penalty notice offence under Schedule 3.
Schedule 2 Item 4 – Applicable fees	Item 4 of Schedule 2 amended so that \$110 is the fee per notice.
Schedule 3 – Penalty notice offences	The penalty amounts for sections 16(1)(a) and (c) are amended to \$1,000.



Appendix 3 – List of Stakeholders

Appliance Industry Association
Australian Industry Group
Australian Constructors Association
Australian Gas Association
Australian Information Industry Association
Black & White Engineering Solutions
Certification Body Australia
Civil Contractors Federation (NSW)
Conformance and Standards Services Pty Ltd
Consumer Electronics Suppliers' Association
EESS Conformity
Electrical Regulatory Authorities Council
Electrical Trades Union of Australia, NSW Branch
Essential Energy
Energy Australia
Engineers Australia
Global-Mark
Housing Industry Association
HPM Legrand
Lighting Council Australia
Master Builders' Association
Master Electricians Australia
National Electrical and Communications Association (NSW)
Pierlite Lighting
SAA Approvals
SAI Global
SGS Australia
Sylvania Lighting
TUV Rheinland



Appendix 4 – Proposed Fee Amendments

Fees charged in 2006 Regulation	Proposed fee in the new 2015 Regulation	Notes
Notice of change of particulars \$113	Notice of change of particulars \$110	This fee has been changed to reflect the administration costs of amending the register, and providing the model approval holder with a written notice in accordance with clause 13(3).
Application fee for extension model approval (Not previously prescribed in the regulation)	Application fee for extension model approval \$459	The process for dealing with an extension of model approval is the same as for an application for renewal of approval under clause 8. The fee reflects the administration costs to Fair Trading.
Application for declaration of a recognised external approval scheme (Not previously prescribed in the regulation)	Application for declaration of a recognised external approval scheme \$3,600 initial application fee; \$2,065 annual renewal fee; and \$156 per person per hour for annual assessment of the scheme.	<p>Currently, Fair Trading charges recognised external approval schemes a fee of \$3,500 for an initial application, \$2,000 annual renewal and \$152 per hour or part thereof, for assessment of the scheme (which may include an inspection of the premises and examination of documentation in relation to the schemes approval processes).</p> <p>This amendment will provide for transparency of the fee-setting process – all stakeholders can see what the fees are, and the fees are subject to governmental approval by the Minister and Executive Council. It will also provide for an annual CPI increase.</p>