



# National Electrical and Communications Association and Master Electricians Australia - Submission

*Response to the NSW Home Building Act*

**September 2023**

[www.neca.asn.au](http://www.neca.asn.au)

## Introduction

The NSW Government has made a commitment to strengthen the quality of the building and construction industry in NSW.

The *Building Legislation Amendment Bill 2023* will be the first tranche of building reform with *The Amendment Bill* being introduced to Parliament next month. *The Amendment Bill* will make changes to existing legislation following earlier consultation with industry and key stakeholders. The proposed amendments in *The Amendment Bill* seek to enhance the building regulator's enforcement powers, as well as make some administrative changes around decennial liability insurance and licensing.

This joint submission has been drafted by the National Electrical and Communications Association (NECA) and Master Electricians Australia (MEA) with the intent to provide a comprehensive position on the early elements of the Building Bill that greatly impact the electro-tech industry in NSW.

Both NECA and the MEA encourage the NSW Government to refer to previous submissions, specifically on supervision and licensing changes, wherein it provided significant, detailed answers to questions raised during previous rounds of consultation.

## Background

NECA is the peak body for Australia's electrical and communications industry, which employs 344,370 people and turns over more than \$82bn annually. NECA represents over 6,500 businesses performing works including the design, installation, and maintenance of electrical and electronic equipment in the defence, construction, mining, air conditioning, refrigeration, manufacturing, communications, and renewable energy sectors.

NECA has advocated on behalf of the electrotechnology industry for over 100 years and helps its members and its industry to operate in an efficient, safe and regulatorily compliant manner.

NECA also plays an integral role in the development of the next generation of Australia's electrical and communications tradespeople, contractors, and sub-contractors. Through its associated Group Training Organisations (GTOs) and Registered Training Organisations (RTOs), NECA offers employment and trade training to some 4,800 apprentices nationally.

Since 1937 MEA has provided its members with holistic support from starting an electrical contracting business to employing an apprentice, through to assistance for growing a business and adapting to change. Specialising in the smaller employer, MEA provides its members access to trusted advice, business tools, savings and advocacy support. Whether it's technical, safety or HR/IR advice, access to the benchmark in safety systems, free access to Standards, discounts on bookkeeping and marketing services, or help to structure your business and more. MEA is the electrical contracting industry's trusted business partner.

## Response

### Trade Assistant Supervision

Both NECA and the MEA firmly believe that a trade assistant is a legitimate role and career option for some in the sector. The trade assistant plays a crucial role in supporting the delivery of electrical installation work, particularly when specialised or labour-intensive work is required to be undertaken.

We note that there are specialist contractors who utilise trade assistants specifically trained in specialised skill sets, on specialised equipment. The electrical component of this work is always undertaken by or under the supervision of a qualified electrician. Their specific skill set supports an electrician's skills and allows the electrician to focus on the more complex electrical components of a project and this should be maintained. Furthermore, in the roles that they perform, often they are more skilled than those that seek to supervise them in a particular discipline, such as heavy cable installation/hauling or civil/building works for supporting structures and mechanical installation.

MEA and NECA both support the concept of a default supervision matrix, but only as supplemental guidance to support businesses in complying with the supervision outcomes referred to in,

- i. s14(2) and s14(4) of the Home Building Act, and
- ii. s19(3)(f) of the Work Health and Safety Act.

However, it should remain clear in the prelude to the supervision matrix that nothing within the matrix permits a business (or PCBU in WHS terms) to ignore the full requirements of their WHS duty of care or perform electrical work without supervision.

Therefore, as with any other aspect of ‘high risk construction work’<sup>1</sup>, the business(es) responsible for the work must have systems and documentation in place to comply with:

- i. their risk management obligations<sup>2</sup>, and
- ii. their duty to provide information, training and instruction to each participating worker.<sup>3</sup>
- iii. requirements for Safe Work Method Statements (SWMS)<sup>4</sup>

Electrical wiring work has a clear definition in the *Gas and Electricity (Consumer Safety) Act 2017*, which NECA understands may soon align with the definition of ‘electrical work’ in CI 146(1) of the *NSW WHS Regulation 2017*.

Supervision of electrical work by unlicensed persons is then addressed in the legislation as follows:

- i. All ‘electrical work’ by an unlicensed (non-apprenticed) person requires direct supervision of a licensed supervisor. Stated in the HBA - s14, and implied in the WHS Reg - CI 146(2)(g)
- ii. TA (or labouring work) associated with electrical work that could be subject to reduced supervision is helpfully outlined by the WHS Reg as (per CI 146)<sup>5</sup>

2. *In this Part, **electrical work does not include the following**—*

*(b) work on a non-electrical component of electrical equipment, if the person carrying out the work is not exposed to an electrical risk,  
Example—Painting electrical equipment covers and repairing hydraulic components of an electrical motor.*

*(c) replacing electrical equipment or a component of electrical equipment if that task can be safely performed by a person who does not have expertise in carrying out electrical work,  
Example—Replacing a fuse or a light bulb.*

*(e) building or repairing ducts, conduits, or troughs, where electrical wiring is or will be installed if –*

*(i) the ducts, conduits or troughs are not intended to be earthed,  
and*

---

<sup>1</sup> <https://legislation.nsw.gov.au/view/html/inforce/2023-09-18/sl-2017-0404#sec.291>

<sup>2</sup> <https://legislation.nsw.gov.au/view/html/inforce/2023-09-18/sl-2017-0404#ch.3-pt.3.1>

<sup>3</sup> <https://legislation.nsw.gov.au/view/html/inforce/2023-09-18/sl-2017-0404#sec.39>

<sup>4</sup> <https://legislation.nsw.gov.au/view/html/inforce/2023-09-18/sl-2017-0404#ch.6-pt.6.3-div.2>

<sup>5</sup> <https://legislation.nsw.gov.au/view/html/inforce/2023-09-18/sl-2017-0404#sec.146>



- A. Introduce a permit scheme for trade assistants undertaking certain work while prohibiting them doing other types of work (in the same way other unlicensed people are prevented from doing electrical work) or;
- B. Amend the definition of 'electrical wiring work' to clarify the scope of work trade assistants may undertake that would allow certain work to be done by an unlicensed person under the supervision of a licence holder.

Both the MEA and NECA believe the regulation of supervision for electrical trade assistants is unnecessary, given the existing provisions in the Home Building Act. The problem associated with poor quality installations could and should be addressed by ensuring adequate inspection of new installations and enforcement using the existing powers of NSW Fair Trading.

We strongly suggest that the discussion about what is and what is not a trade assistant, ignores the requirements for supervision of electrical wiring work in the Home Building Act. Section 14(2) of the Home Building Act permits any individual, whether they are classified as a trade assistant or not, to perform electrical wiring work under supervision. With additional requirements under s14(4) for the licensed supervisor to personally ensure the 'work is correctly done'.

MEA and NECA recommends that if the definition of what is 'electrical wiring work' is to be expanded, that the full definition of what is 'electrical work' in reg146 of the WHS Regulation be adopted without reference to trade assistants specifically.

Based on the two options presented in the paper and the rationales provided for each, both MEA and NECA is of the opinion that option B is more appropriate and achievable from both a practical and regulatory perspective. However, there are some specific concepts in this proposal that need to be addressed to make it fit for purpose. In particular, the constant duty that the supervisor is responsible for competency assessment determining supervision levels, as opposed to the employer or host is inconsistent with much of industry practice. However, a requirement for formal written competency assessment / verification of competence for TA tasks that include specific knowledge or skill in supporting electrical work should be included in the option B supervision matrix.

The contractor responsible for the work is also responsible for having sufficient systems and policies in place to handle this outcome. With the immediate supervisor maintaining their duties to comply with s14(4) of the HBA, Part 9 of the G&E(CS)Reg, and s28 of the

WHS Act, and the lawful instructions of their employer. Our joint opinion is that option B is the only option and should be amended as per our submission.

The industry does not support unqualified persons completing work that should be completed by an electrician. Works should be strictly limited, and supervision details still be provided around the works including, installation of large cables (over 120mm<sup>2</sup>), installation of conduits in ground, and installation of cable trays. Supervision can be reduced to 6-1 or 4-1 in these circumstances, and the works must be signed off by a nominated electrician.

Certain companies may exploit the clause for several reasons including reduction of costs and government needs to ensure that this is still managed. There are many contractors that use two tradesmen, with four apprentices, and multiple unlicensed personnel to keep costs to a minimum at the risk of faulty workmanship.

### **Apprentice Supervision Matrix**

MEA and NECA agree that the proposed Apprentice Supervision Matrix align with other jurisdictions and therefore, there is no opposition from industry to implement a similar model in NSW.

In recognition of adult apprentices who offer greater life experience to the industry, we believe that there should be a level of flexibility for the supervision levels of third- and fourth-year apprentices based on a similar risk/competency assessment as outlined above with trade assistants. However, this must exclude live work and independently conducting safety and compliance tests<sup>6</sup> prior to re-energising electrical equipment.

This is also the purpose of reg27 and 28 of the *Home Building Regulation 2014* and reduced supervision subject to the risk of the task and the demonstrated competence of the apprentice.

### **Restricted Electrical License**

Both the MEA and NECA strongly recommend that the disconnect/reconnect authority in the Home Building Act should remain unaffected.

Following industry feedback from industry partners, this should be a separate competency for plumbers and fitters and if CPD is introduced, it should be subject to skills maintenance.

---

<sup>6</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2018-0501#sec.38>

## **Electrical Contracting License**

The department proposes the removal of the *license to contract* and replace it with have a *license to perform work*. This poses a threat to consumer protection and presents safety risks and consequences, primarily because the holder of a 'license to perform work' may or may not be engaged as an independent contractor by a third party to perform work on a consumer installation. In such an instance,

- i. Which ABN holder is responsible for warranting the work/ / holding appropriate insurances?
- ii. Which ABN holder (PCBU) is responsible for WHS duties relating to
  - a. Primary duty of care
  - b. Maintaining the safe system of work and SWMS's required for the work and other aspects of Part 4.7 Div 4 of the WHS Regulation

MEA and NECA do not support the proposed changes and firmly believe that the current system of separate Contractor and Worker licenses be maintained in the interests of public safety and alignment with all other state and territory jurisdictions.

## **Continuing Professional Development (CPD)**

MEA and NECA are supportive of the concept of Continuing Professional Development (CPD) but whilst it can be delivered mostly online, a certain element of this program should have an in-person assessment for mandatory testing.

Like the Victorian model, it should have an initial skills maintenance and then a skills development component. CPD for contractor licences should be different and cover business, technology, and supervisory competencies. However, these aspects should be covered by membership of an association, and attendance of industry events.

## **Professional Standards Scheme**

Both NECA and the MEA are open to the concept of a Professional Standards Scheme (PSS) but believe that if the NSW Government implements the program in NSW, it should be a collaboration between the main industry stakeholders including MEA, NECA and most importantly the ETU. However, no commitment will be made by key industry groups until a detailed proposal is presented for review and consideration, implementation of CPD should be the first priority.



## Electrical Inspectors and Enforcement

The industry strongly believes that with the *NSW Home Building Act* and the reform that it will introduce, there will need to be a level of inspection and enforcement of both the new and existing legislation. If this aspect is ignored by government, culture, regulatory behaviour, and practical change will not occur across the industry.

After discussion with the relevant department representatives and the current Minister for Fair Trading, Better Regulation and Building, there are only three electrical inspectors in NSW. This number presents a serious problem, and more action is required to ensure new industry standards are met and compliance is monitored. It is hoped as detailed in the NSW 2023/24 Budget the office of building commissioner additional funding will include funds for the compliance in our sector.

It is important also to address the problem that SafeWork NSW routinely triage electric shock incidents involving electrical workers (including apprentices) as a non-inspector response, especially if the affected person walks away without injury or given clearance by an ECG test. Therefore, the detection method with the greatest likelihood of detecting serious HBA & WHS non-compliance, is rendered impudent. In NSW, investigative action for electrical incidents typically occurs where it manifests into a very serious injury or death. There are large opportunities to intervene and protect workers, particularly young workers, and consumers by improving this response.

NECA and MEA believe that SafeWork NSW struggles to understand it's role in regulating the electrical industry in NSW.

- WHS enforcement for issues involving electrical installation work is not sufficient and amendments to the current legislation won't address the issues until SafeWork NSW understands its role and begins to identify and respond to serious non-compliance in incident reports and complaints from concerned persons.
- Collaboration between SafeWork NSW inspectors and FT inspectors is hampered by the triage process outlined above. Specifically, actionable reports of electrical incidents are mostly not made available to suitably qualified inspectors to review and selectively investigate – 'not a regulatory priority'.<sup>7</sup>

---

<sup>7</sup> <https://www.safework.nsw.gov.au/about-us/safework-nsw-regulatory-priorities-2023>

- Fair Trading cannot provide an adequate installation inspection service with the current level of resourcing given the volume of work in NSW (reported and not reported by the mandatory CCEW process).
- A way to improve the industry regulation would be to have either:
  - an Electrical/Energy Safety Authority in NSW provided with appropriate authorities and resources, or
  - creation of a directorate within DCS with powers under Fair Trading, Home Building Act, Gas & Electricity (Consumer Safety) Act, and WHS legislation and resourced with suitably qualified inspectors capable of investigating non-compliance of electrical work and notifiable electrical incidents.

### **Building Products Safety**

With respect to electrical work and the quality / safety of the products used.

A licensed electrician/contractor is required to undertake a 'safety and compliance' check to establish 'its safe operation and compliance with the Australian/New Zealand Wiring Rules' (CI 34 of the Gas & Electricity (Consumer Safety) Regulation and certify that outcome via a Certificate of Compliance for Electrical Work (CCEW).

The Australian/New Zealand Wiring Rules (AS/NZS 3000) includes numerous requirements for installed/utilised electrical products/hardware to comply with specific complementary requirements. It would be NECA's position that electrical contractors are already subject to specific requirements to ensure the safety and quality of the materials they supply and are subject to enforcement action if found to supply substandard equipment or certify poor installations.

The installation of unsafe, non-compliant electrical equipment can be costly for business and consumers and poses a risk of electrical fire, shock, and property damage. NECA has long been an advocate for adequate Australian standards and check testing programs, to make sure that electrical products do not vary from the design that was tested and given approval to allow the product to enter the Australian market.

Similarly, NECA supports rules to stamp out counterfeit products from entering the market. The Electrical Equipment Safety System (EESS) was introduced in 2013 to set rules on responsible suppliers of electrical equipment to ensure products meet the requisite Australian standards and to register all products and suppliers of products onto a national

data base. The EESS is now operating in all Australian states and territories other than NSW, as well as operating in New Zealand. Registration fees generated through the data base are used to undertake comprehensive electrical equipment check-testing programs and compliance activities, as well as information provision to the electrical industry and consumers.

NECA calls on all governments to engage in active check-testing programs to ensure product suitability and to stamp out counterfeit products NECA supports the EESS and calls upon all states and territories to fully commit to its implementation.

### **Intentional Phoenixing and Insolvency**

With respect to providing greater powers for the NSW building regulator to ensure individuals are held accountable for intentionally phoenixing, NECA would note that current security of payment reform is inadequate and must be improved significantly.

Recent collapses of many builders in NSW reflect conditions facing the industry that are leading to unprecedented risk of financial stress, insolvencies, job losses and reputational damage. Such pressures often go beyond the material impacts and affect the wellbeing of business owners, their employees, and their families. It is morally unacceptable that subcontractors do not receive payment for the work they carry out. Whilst Security of Payment laws have been enacted by jurisdictions, they remain inconsistent and inadequate in protecting the rights of subcontractors.

The state of NSW has experienced some of the worst builder financial collapses in the country and yet, its legislation provides little to no protection for subcontractors. While the NSW government is looking into organisations and individuals affected or involved in non-payments, it is more critical to assess what legislation the state needs to have in place in order to not enable but instead prevent non-payments of subcontractors in the sector.

Further, unfair payment practices are exacerbated by a culture of imposing unfair contract terms on subcontractors. Subcontractors should not become unwilling bankers for interest-free loans for builders.

Mr John Murray AM (author of the Federal Government's Review of Security of Payment Laws, Building Trust and Harmony Report) has provided via his report a pathway to have these issues addressed.

NECA strongly recommends the following three actions:

1. Urgently enact stronger Security of Payment laws through the implementation of the Murray Report as it applies to the state of NSW, including provision for cascading statutory trusts in favour of subcontractors and sub-subcontractors.
2. Strengthen prohibitions for unfair contract terms, including prohibition of specified types of unfair contract terms which have become common in the construction industry.
3. Government as a significant purchaser of goods and services in the state, must first and foremost ensure state government procurement practices support fair contracting down the construction supply contractual chain.

To arrange NECA's further participation or should you wish to discuss any matter relating to the joint submission, please contact Lauren O'Keefe, Policy and Advocacy Manager, at [Lauren.OKeefe@neca.asn.au](mailto:Lauren.OKeefe@neca.asn.au) or on 0401 651 841.

Yours sincerely



**Oliver Judd**  
**Chief Executive Officer**  
**National Electrical and Communications Association**



**Malcolm Richards**  
**Chief Executive Officer**  
**Master Electricians Australia**