



11 February 2022

Consumer Policy Unit  
Market Conduct Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600  
Email: [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

**Consultation Regulation Impact Statement - Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law**

Dear Consumer Policy Unit

Thank you for the opportunity to comment on the *Consultation Regulation Impact Statement - Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law*.

Lighting Council Australia is the peak body for Australia's lighting industry. Lighting Council's goal is to encourage the use of environmentally appropriate, energy efficient, quality lighting systems. Our members manufacture products in Australia, import overseas manufactured products and supply the majority of the lighting market in Australia.

Lighting Council Australia's comments on the consultation paper are enclosed with this letter. Please contact me if you would like to discuss this submission.

Yours sincerely

**David Crossley**

A handwritten signature in blue ink, appearing to read "David Crossley", with a horizontal line extending from the end of the signature.

**National Technical Manager**  
**Lighting Council Australia**  
[dcrossley@lightingcouncil.com.au](mailto:dcrossley@lightingcouncil.com.au)

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## Lighting Council Australia draft submission in response to *Consultation Regulation Impact Statement [Consultation paper] Improving the effectiveness of the consumer guarantee and supplier indemnification provisions under the Australian Consumer Law*

### Glossary of terms

The terms used in this submission follow the terms used in the Australian lighting market as follows:

- Australian manufacturers – Businesses manufacturing in Australia.
- Overseas manufacturers – Businesses manufacturing outside of Australia.
- Suppliers/importers – Businesses importing lighting products from overseas manufacturers and supplying the lighting market in Australia. These businesses sell variously to the following market channels: electrical wholesalers; electrical contractors; retail shops; and directly to consumers. Note: Not all suppliers/importers sell to all the above market channels.
- Electrical wholesaler – Businesses primarily selling to electrical contractors.
- Electrical contractors – Businesses selling and installing lighting products into residential, commercial, industrial and public lighting installations.
- Retailers – Businesses selling through a bricks and mortar shop or online to end-user consumers. These businesses generally include specialty lighting retail shops, supermarkets and national retail chains.

Note: Many lighting businesses sit across multiple market channels mentioned above.

### Key characteristics of the Australian lighting market – background information and context

The lighting market is characterised by relatively low-cost, commodity goods such as LED lamps (i.e. light bulbs) and luminaires (i.e. light fittings), a very large number (i.e. tens of thousands) of overseas manufacturers, a highly competitive market and a large number of suppliers/importers and retail outlets. The vast majority of the lighting market has transformed to LED technology over the last decade.

Compared to traditional lighting technologies (e.g. halogen and fluorescent), LED products are characterised by much lower energy consumption, longer average lifetimes and similar prices. Consumers are benefiting significantly due to reduced electricity bills, increased market competition and increased product features (e.g. smart lighting products).

Lighting product failures do occur infrequently. Lighting Council Australia members report that the majority of genuine product faults occur in the first 100 hours of product operation.

The rate of product faults in the LED lamp (i.e. bulbs) market is less than one in one thousand products sold. Even fewer LED luminaires (i.e. fittings) are returned as faulty.

### The lighting market and the Australian consumer law

Lighting Council Australia members are not aware of any significant barriers within the lighting market in Australia that hinder consumers from accessing the consumer guarantee remedies to which they are entitled. This is likely due to:

- The electrical contractor market expecting (and receiving) free replacement goods for faulty products - The supply chain arrangements in this market are importer(supplier) sale to electrical wholesaler or directly to electrical contractors and then installation by electrical contractors into industrial, commercial or residential buildings;
- The power imbalance that exists in some lighting supply chains involving large retail chains and relatively small suppliers. This power imbalance is the reverse situation compared to the automotive industry example contained in the *Consultation paper*. For example, large national retail chains demand suppliers/importers indemnify and replace goods returned by consumers regardless of whether the goods are found to be faulty or not.
- The relatively low value and long life of average lighting products. For example, commodity LED lamps retail for around \$5 and commodity LED recessed downlights retail for \$20 or less. The lifetimes of LED lamps are more than five times the lifetimes of traditional halogen bulbs.
- A highly competitive industry with a large number of quality products in the market.
- A market that demands suppliers/importers provide efficient and responsive service.
- Social media and online reviews can expose importers/suppliers to unfavourable reviews unless consumers are completely satisfied with their product experience.
- Lighting Council Australia members agree to abide by our Code of Conduct requiring them to comply with Australian regulations and standards. Noting also that our members supply the majority of the lighting market in Australia.

Due to the reasons listed above, the majority of Lighting Council Australia members and their supply chains offer free replacement products when products fail before their expected lifetime.

Due to the nature of commodity LED products (i.e. many do not have replaceable parts, are not intended to be repaired and are recycled/disposed at end of life) it is often not possible for suppliers to repair failed LED lamps and luminaires. Instead, replacement products are offered if a product fails before its expected lifetime. Consumers are usually satisfied with this offer.

Lighting Council Australia members report that the majority of consumer returns are due to incorrect selection by the consumer. For example, incorrect colour temperature or an LED product being too bright for a particular application.

### The DIY market is problematic

Lighting Council Australia members estimate that around 25% of the problems associated with failed LED products and sweep fans occur due to incorrect do-it-yourself (DIY) installation of products purchased at retail level by consumers and then installed by homeowners performing unlicensed (illegal) electrical work.

In contrast, close to 100% of light fittings purchased at electrical wholesale level are installed by electrical contractors and the vast majority are installed correctly. We note electrical contractor installation problems are vastly reduced compared to unlicensed DIY homeowner installations.

Light fittings and fans that are 'hard-wired' (i.e. permanently connected) to a home's electrical wiring are required to be installed by licensed electricians. Installation by an electrical contractor significantly increases the likelihood that a lighting product will be installed correctly. That is, the lighting product will likely be compatible with other control devices (e.g. dimmers, transformers, speed controllers, sensors, etc.) and safely installed.

### Online shopping results in less informed purchases

Online shopping often removes the advice provided by retail/wholesale staff and electrical contractors so online consumers are more likely to purchase a product that is incompatible with their installation (e.g. incompatible with dimmers or speed controllers) or have characteristics that a consumer may not like (e.g. a colour temperature disliked by the consumer or overly bright light). This combined with DIY installation is resulting in ill-informed consumer purchases and incompatible lighting installations that shorten the life of lighting products or increased number of consumer returns due to incorrect consumer selections.

## Consumers game the system

Lighting Council Australia members also report that around 10% of returned products are relatively old, have provided satisfactory service for tens of thousands of hours over four, five or more years and do not deserve to be replaced with a free replacement product. A small percentage of consumers try to game the system and are using the existing consumer guarantee provisions to pressure retailers and suppliers into replacing products when that replacement is unjustified.

## Market education would assist

The lifetimes displayed on lighting product packaging are based on tested average product lifetimes, correct installation and when used in association with compatible control equipment.

A small number of inexperienced or unscrupulous suppliers are ill-informed regarding lighting product lifetime claims and often erroneously quote LED lumen depreciation figures instead of product lifetime figures. Education of this segment regarding correct and incorrect marketing statements is recommended.

Lighting market education material should be produced that highlights product characteristics, correct installation practices and clear examples that demonstrate when consumer guarantee provisions do and do not apply. In addition, educating the market that particular installations are required (by law) to be carried out by qualified persons would provide a safety benefit. Further, warranties may become void if installation instructions are not followed or when qualified persons are required (by law) to install particular products and that hasn't occurred.

Lighting Council Australia offer to assist the ACCC develop suitable education material.

## Additional penalty provisions could have unintended consequences and are not necessary in the lighting market

Lighting Council Australia does not agree that additional penalty provisions under the consumer guarantee are needed in the lighting sector due to the vast majority of failed lighting products/complaints being satisfactorily resolved under the current consumer guarantee laws.

Lighting Council Australia highlights the following unintended consequences are likely if additional penalty consumer guarantee provisions are implemented in the lighting market:

- Increased numbers of consumers, who return very old or incorrectly installed failed products, emboldened by the additional threat of civil penalties that they can wield.
- Powerful national retail chains bowing to additional consumer pressure, replacing very old or incorrectly installed products without question and passing the liability along the supply chain to suppliers/importers.
- Importers/suppliers feeling powerless to question illegitimately returned products due to the perceived threat of retaliatory action by powerful retail chains. For example, supplier/importer businesses can be ruined by powerful retail chains discontinuing to stock their products.
- Increased consumer prices and reduced consumer choice. For example, importers/suppliers will need to budget for increased numbers of consumers gaming the system and increased numbers of illegitimately returned products. 'Return on Investment' considerations in this scenario would mean reduced numbers of product models available on the market (i.e. reduced consumer choice) as lower volume lines would be removed from supply.
- Suppliers could also start to recommend that all lighting products, including lamps (bulbs) be installed by licenced electricians to ensure correct installation (as per Australian Standards) and compatibility with other control equipment. The majority of lamp (bulb) replacements are currently undertaken by consumers so such recommendations would likely increase consumer costs.

Lighting Council Australia would argue that additional consumer guarantee civil penalty provisions are not required in our market sector due to the unintended consequences and market characteristics mentioned above.

However, additional market education material would likely provide a benefit to all lighting market participants.

### [Additional consumer guarantee provisions](#)

Lighting Council Australia also understands that some consumer product sectors have specific power imbalances that may require additional penalty provisions to be applied to

alter behaviours in those sectors. If additional penalty provisions are determined to be required in those sectors, then Lighting Council Australia would recommend that such penalties only apply to those sectors and not to the lighting product sector.

The lighting market is not experiencing any significant problems under the current laws and there are likely unintended consequences if consumers are emboldened and increased gaming occurs.

If sector specific provisions are not practical to deliver in law and Treasury decides to introduce additional penalty provisions across the whole economy then Lighting Council Australia would ask that any additional penalty provisions around 'retribution' should include the ability for the law to apply in any case where a powerful market entity acts in retribution against a smaller market participant regardless of the supply chain arrangements (i.e. Noting again that the lighting market example outlined above is very different compared to the automotive market example outlined in the *Consultation paper*).

Further, if additional consumer guarantee provisions are introduced, then Lighting Council Australia requests additional penalty provisions should apply in the case where consumers make claims that are later found to be false or vexatious.