



Energy efficient products and services

A regulatory reform discussion document

June 2021





**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI

Ministry of Business, Innovation and Employment (MBIE) Hīkina Whakatutuki - Lifting to make successful

MBIE develops and delivers policy, services, advice and regulation to support economic growth and the prosperity and wellbeing of New Zealanders.

MBIE combines the former Ministries of Economic Development, Science + Innovation, and the Departments of Labour, and Building and Housing.

More information

www.mbie.govt.nz
0800 20 90 20

Information, examples and answers to your questions about the topics covered here can be found on our website www.mbie.govt.nz or by calling us free on 0800 20 90 20.

Disclaimer

This document is a guide only. It should not be used as a substitute for legislation or legal advice. The Ministry of Business, Innovation and Employment is not responsible for the results of any actions taken on the basis of information in this document, or for any errors or omissions.

Online: ISBN 978-1-99-001982-1

June 2021

©Crown Copyright

The material contained in this report is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material being reproduced accurately and not being used in a derogatory manner or in a misleading context. Where the material is being published or issued to others, the source and copyright status should be acknowledged. The permission to reproduce Crown copyright protected material does not extend to any material in this report that is identified as being the copyright of a third party. Authorisation to reproduce such material should be obtained from the copyright holders.

Ministerial Foreword

This Government is committed to achieving a just transition to a low-carbon energy economy. A just transition is one that significantly reduces greenhouse gas emissions on one hand, while continuing to lift productivity and living standards on the other, to realise an energy future that is productive, sustainable and inclusive.

In the recent discussion document *Accelerating Renewable Electricity and Energy Efficiency*, the Government sought views on a range of proposals to drive the energy transition. Those proposals built on and supported other key commitments, including our response to the Productivity Commission's *Low Emissions Economy* report, and the interim Climate Change Commission's *Accelerated Electrification* Report. The proposals will also now form the basis of the *Heat, Industry and Power sector chapter of the Government's Emissions Reduction Plan* to respond to the independent Climate Change Commission's advice for the first three emissions budget periods from 2022-2035.

Energy efficiency is a solution hiding in plain sight. As a founding member of the International Energy Agency's Global Commission for Urgent Action on Energy Efficiency, I understand the important role energy efficiency will play in achieving the Government's ambitious renewable electricity and climate change goals.

This document further contributes to the Government's climate goals by setting out proposals to update the energy performance and labelling regulations.

The energy performance and labelling regulations have been quietly working for almost 20 years to reduce energy consumption, remove poorly performing products from the market, and assist consumers to make more energy-efficient purchases.

Almost 20 years on, it is timely to consider updating the regulations to ensure they remain fit-for-purpose. Future-proofing the regulations will ensure New Zealand continues to realise the multiple benefits of energy use, and is well-placed to make a just transition to a low-carbon economy.

We want to hear your views on the proposals in this paper and how they can contribute to the *Heat, Industry and Power chapter of the Government's Emissions Reduction Plan*. Thank you for taking the time to engage on these important issues, and I look forward to hearing your ideas on how the regulations can support New Zealand's transition to a 'clean and clever' energy future.

Hon Dr Megan Woods

Minister of Energy and Resources

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by 5pm on 21 July 2021. Your submission may respond to any or all of these issues. Where possible, please include evidence to support your views, for example, references to independent research, facts and figures, or relevant examples.

Please include your contact details in your submission. You can make your submission:

- › By completing the online summary submission form which can be found at www.mbie.govt.nz/have-your-say.
- › By sending your submission as a Microsoft Word document to: energymarkets@mbie.govt.nz.
- › By mailing your submission to:
Energy Markets Policy
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

Please direct any questions that you have in relation to the submissions process to energymarkets@mbie.govt.nz

Use and release of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on energy efficiency regulatory system review.

MBIE intends to upload PDF copies of submissions received to its website at www.mbie.govt.nz.

MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- › indicate this on the front of the submission, with any confidential information clearly marked within the text; and
- › provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Privacy information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to the Energy Efficiency and Conservation Act 2000 and the Energy Efficiency (Energy-Using Products) Regulations 2002. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Contents

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| Ministerial Forward | I |
| Glossary | V |
| Introduction | 1 |
| Energy Efficiency and Conservation Act 2000 | 2 |
| Energy Efficiency (Energy Using Products) Regulations 2002 | 2 |
| Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 | 3 |
| Trans-Tasman Equipment Energy Efficiency (E3) Programme | 3 |
| Review of the New Zealand energy efficiency regulatory system 2019 | 3 |
| Assessment criteria for proposed changes | 4 |
| Part 1: Future-proofing the system | 7 |
| Delegate the prescription of technical MEPS and labelling regulations to the Minister of Energy and Resources..... | 8 |
| Allow regulations to be made for energy-using systems..... | 9 |
| Allow MEPS and labels to include requirements which are indirectly connected to energy performance, such as safety requirements..... | 10 |
| Allow MEPS and labels to include requirements related to demand response capability | 11 |
| Allow MEPS and labels to include greenhouse gas emissions requirements | 12 |
| Part 1 impact assessment | 13 |
| Part 2: Minimising unintended consequences | 15 |
| Regulate any type of supply of regulated products..... | 15 |
| Clarify that the existing exemption applying to second-hand goods only applies to goods that have been previously sold in New Zealand..... | 16 |
| Include online sales in labelling requirements..... | 17 |
| Regularly review the regulatory system to ensure the regulations continue to fulfil their purpose ... | 18 |
| Part 2 impact assessment | 19 |
| Part 3: Improving system administration | 21 |
| Allow EECA to pass on sales data to agents carrying out functions for EECA..... | 21 |
| Allow EECA to grant exemptions from providing statistical information on a case-by-case basis..... | 22 |
| Allow EECA to grant exemptions from an aspect of the standards on a case-by-case basis..... | 23 |
| Allow EECA to charge a fee to cover the costs associated with administering the regulatory system... | 23 |
| Part 3 impact assessment | 24 |

| | |
|------------------------------------------------------------------------------------------------------------|-----------|
| Part 4: Ensuring effective compliance | 26 |
| Enhance EECA's monitoring, inspection and investigation powers | 27 |
| Adopt a graduated set of enforcement interventions..... | 29 |
| Increase the maximum penalty level so that it acts as a sufficient deterrent against non-compliance. | 32 |
| Clarify that a monetary penalty can be imposed for each breach..... | 33 |
| Part 4 impact assessment | 33 |
| Part 5: Delivering good and fair process | 35 |
| Specify the lead-in time for new or revised standards to come into force | 35 |
| Outline the requirements importers and New Zealand manufacturers need to meet to register products..... | 36 |
| Outline the check testing policy in guidance material to be referenced in the regulations..... | 37 |
| Include a process of internal review and a right of appeal in The Act..... | 38 |
| Part 5 impact assessment | 39 |

Glossary

| | |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| 4E | Energy Efficient End-use Equipment |
| The Act | Energy Efficiency and Conservation Act 2000 |
| CER | Closer Economic Relations |
| DIA | Department of Internal Affairs |
| DIA's guide | Department of Internal Affairs' Guide for Compliance Agencies in New Zealand |
| E3 | Equipment Energy Efficiency Programme (trans-Tasman programme) |
| EECA | Energy Efficiency and Conservation Authority |
| EPS | Emission performance standards |
| GEMS | Australia's Greenhouse and Energy Minimum Standards |
| GEMS Act | Australia's Greenhouse and Energy Minimum Standards Act 2012 |
| GHG | Greenhouse gas |
| ICCC | Interim Climate Change Committee |
| IEA | International Energy Agency |
| LED | Light-emitting diode |
| MBIE | Ministry of Business, Innovation and Employment |
| MEPS | Minimum Energy Performance Standards |
| The Minister | Minister responsible for the administration of the Energy Efficiency and Conservation (EECA) Act (currently the Minister of Energy and Resources) |
| PCO | Parliamentary Counsel Office |
| PJ | Petajoules |
| Product Regulations | Energy Efficiency (Energy Using Products) Regulations 2002 |
| Vehicle Regulations | Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 |
| The Review | The EECA-commissioned Review of Energy Efficiency Regulations (2019) |
| SEM | Single Economic Market |
| TTMRA | Trans-Tasman Mutual Recognition Arrangement |

Introduction

The Government is committed to responding to climate change while securing an affordable, secure, and sustainable energy system for all New Zealanders. In 2019, the Climate Change Response (Zero Carbon) Amendment Act set into law a new target of net zero emissions of all greenhouse gases (GHG) other than biogenic methane by 2050. As part of New Zealand's climate change programme, the Government has also set an aspirational goal of 100 per cent renewable electricity generation by 2030. To meet this goal, modelling suggests the need for additional renewable generation build, and a substantial increase in battery storage and demand response.

However, the way that energy is used is just as important as the way it is generated and stored. The Energy Efficiency and Conservation Authority (EECA) published the [Energy Efficiency First: The Electricity Story](#) report in 2019 and found that by increasing the uptake of energy efficient technologies in factories, businesses and homes, we can reduce the need to construct additional renewable energy infrastructure.

Regulation is one lever that can be used to achieve this ambitious goal. Minimum Energy Performance Standards (MEPS) and energy rating labels, which are prescribed in the Energy Efficiency (Energy Using Products) Regulations 2002 (the Product Regulations) and the Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 (the Vehicle Regulations), underpin EECA's most successful energy efficiency programme to-date. Since the Product Regulations were introduced, the 86 million regulated products sold in New Zealand have delivered 59.55 petajoules (PJ) in energy savings, avoided 2.33 million tonnes of GHG emissions and accrued \$1.45 billion in national monetary benefit (Figure 1).

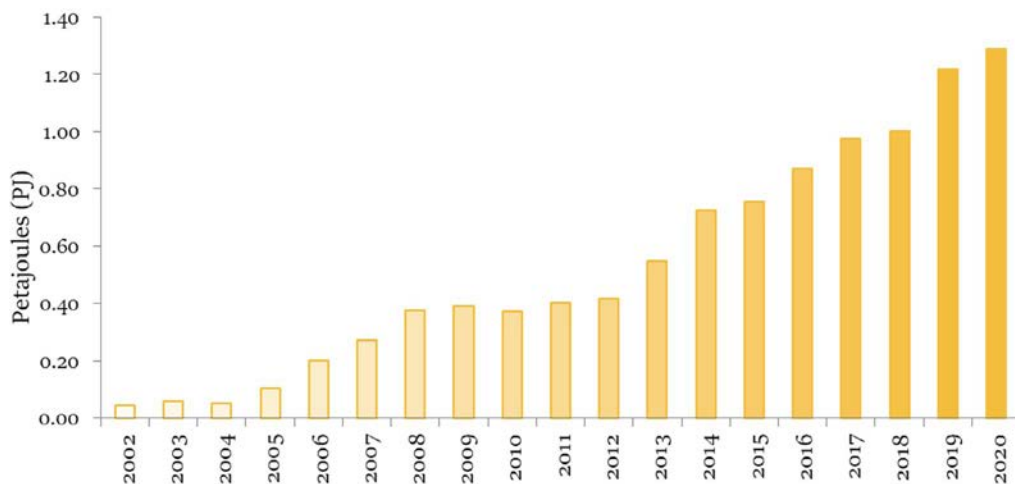


Figure 1: Annual energy savings from units of regulated products sold.

To ensure the regulations remain fit for purpose, EECA commissioned a review of the regulatory system in 2019. This discussion document details the proposals made in response to the recommendations of that review and seeks to update the energy efficiency regulatory system, so that it can support the transition to a net zero carbon economy. This energy efficiency regulatory review will also contribute to the *Heat Industry and Power sector chapter of the Government's Emissions Reduction Plan* for the period from 2022 to 2035, to set us off on a path towards our net zero emissions future.

Energy Efficiency and Conservation Act 2000

The Energy Efficiency and Conservation Act (The Act) is the primary legislation for energy efficiency regulation and seeks to promote energy efficiency, energy conservation, and the use of renewable energy in New Zealand. The Act also established EECA as a Crown entity to encourage, promote and support energy efficiency, energy conservation and the use of renewable sources of energy in 2000. The Ministry of Business, Innovation and Employment (MBIE), which advises the Government on energy policy, is EECA's monitoring agency.

Under The Act, the Minister of Energy & Resources is responsible for, among other things, promoting public awareness in New Zealand of the importance of energy efficiency and conservation. The Minister does this by providing information and advice, fostering education programmes, and promoting practices and technologies that advance energy efficiency, energy conservation, and the use of renewable energy.

The Act also enables the Government to develop regulations to implement MEPS and energy performance labelling for energy-using products, vehicles and services and prescribe fines for contravening the regulations.

Energy Efficiency (Energy Using Products) Regulations 2002

The Product Regulations create a national system for regulating the energy efficiency of appliances and equipment sold in New Zealand. They prescribe MEPS for certain energy-using products and specify labelling requirements for specific products. MEPS and energy performance labelling are regulatory measures that seek to progressively raise the average energy efficiency of appliances and equipment and remove inefficient products from the market.

MEPS require products to meet specified minimum energy performance criteria when tested under standardised conditions. Energy performance labels provide consumers with information that enables them to compare the energy use of given products relative to others in their category. MEPS and energy performance labels are complementary and are designed to address different barriers to energy efficiency. Together they result in reduced operating costs for energy-using products and services, and contribute towards reducing New Zealand's energy consumption and associated GHG emissions.

ISSUES HIGHLIGHTED IN 2019 REVIEW OF THE ENERGY EFFICIENCY PRODUCT REGULATIONS

- › Unnecessary burden on Cabinet.
- › Inflexible to market movement and innovation.
- › Misaligned with Australian system.
- › Limited access to information.
- › Limited market coverage.
- › Limited investigative powers.
- › Limited proportionate enforcement tools.

Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007

The Vehicle Regulations make it mandatory for light vehicles to display Vehicle Fuel Economy Labels (VFEL) when offered for sale by a registered motor vehicle trader. VFELs allow consumers to compare the fuel economy of vehicles (using a six-star rating scale) and their average annual fuel costs. The purpose of the VFEL scheme is to improve the fuel efficiency of new and used light vehicle models imported into New Zealand by providing consumers with comparative fuel economy information at point of sale. This enables more informed purchase decisions, and increased demand for more fuel-efficient vehicles.

Trans-Tasman Equipment Energy Efficiency (E3) Programme

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is a non-treaty arrangement between the New Zealand Government and Australia's Commonwealth, state and territory governments. Under the TTMRA, goods that are produced or imported in any one Australian state or territory, or in New Zealand, can be legally sold in all other participating jurisdictions.

The Equipment Energy Efficiency (E3) Programme is a cross-jurisdictional programme between the Australian Commonwealth, state and territorial governments, and the New Zealand Government. E3 is a collaboration to deliver a single, integrated programme on energy efficiency standards and labelling requirements for equipment and appliances.

Under the Closer Economic Relations (CER) Trade Agreement, New Zealand and Australia have committed to creating a seamless trans-Tasman economic environment. The Single Economic Market (SEM) agenda provides significant economic benefits to both countries by lowering business costs and facilitating easy operations across the Tasman for businesses and people.

As a single market for many commercial and residential products, it is important that Australian and New Zealand businesses are supported and encouraged to create new low-emissions technologies and deploy existing low-emissions technologies. Beyond the environmental effect, well-designed support for low-emissions innovation will be beneficial to the wider economy.

In 2019, the Australian Government also undertook an [independent review](#) of its regulatory system. In some respects, New Zealand's Regulations already have limited application compared to Australia, which creates issues for trans-Tasman cooperation under the E3 programme and the TTMRA. There is a risk that the Australian review may result in a further divergence of Australia's regulatory powers from the regulations, as they move towards greater emissions saving opportunities.

The proposals outlined in this document aim to align with our regulatory system with Australia's and more fully leverage New Zealand's participation in the E3 programme. The proposals have been developed with Australia's recent Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act) review in mind, and in consultation with Australia.

Review of the New Zealand energy efficiency regulatory system 2019

Although there have been incremental changes to the energy performance and labelling requirements of individual products in New Zealand, until 2019 the regulatory system had not been reviewed since it was first introduced in 2002.

In 2019, EECA commissioned a review to identify issues that are affecting the successful operation of the regulatory system.¹ The Review was informed by EECA's technical experts, representatives from industry and other agencies responsible for product regulation, Australian officials, energy efficiency systems in overseas jurisdictions and existing domestic systems for product regulation.

The Review found that the regulations have provided a nationally consistent approach to product energy efficiency. They have been effective at reducing energy consumption, removing poor performing products from the market and assisting consumers to make more-informed choices when purchasing energy-using products.

¹ [Review of Energy Efficiency Regulations: Report for the Energy Efficiency and Conservation Authority](#)

However, it also identified a number of issues that are preventing the optimisation of the system:

- › Requiring MEPS and labelling requirements to be updated by amending the regulations creates an unnecessary burden on the Cabinet decision-making process.
- › The Product Regulations are unable to respond appropriately to market and technological changes, such as dealing with products purchased for commercial use, via online sales, and other matters contingent to energy performance, such as safety requirements.
- › The New Zealand registration and information requirements are misaligned with the Australian registration scheme.
- › The regulation-making powers in The Act limit how much of the market the regulations cover.
- › EECA's powers to investigate suspected cases of non-compliance and gather material to assist potential prosecutions are limited.
- › The range of proportionate enforcement tools available to EECA is limited.

MBIE and EECA have considered the results of The Review, and conducted initial engagement with stakeholders, to put together a range of proposals. The aim of these proposals is to enhance the energy efficiency regulatory system, and support the achievement of New Zealand's future energy efficiency and emissions reductions goals under the *Heat Industry and Power Emissions Reduction Plans* for 2022 to 2035.

As noted by the [New Zealand Productivity Commission](#), transitioning to a low-emissions economy will require technical change in New Zealand's energy and transport systems, buildings, and industrial processes. Increasing the energy efficiency of homes, businesses, and transport will provide benefits to New Zealand through energy cost savings and improved environmental outcomes. This will help improve productivity, competitiveness, health outcomes and energy affordability.²

Assessment criteria for proposed changes

The regulations are administered by the Ministry of Business, Innovation & Employment (MBIE). It committed to reaching best practice in all the regulatory systems under its stewardship by 2022. MBIE [assesses the efficacy of regulatory systems](#) against four dimensions:

Effectiveness - To what extent does the proposal deliver energy and emissions savings? This may include increased regulatory scope, capturing more of the market, or making it easier to identify and implement new relevant regulatory opportunities to deliver energy and emissions savings.

Efficiency - To what extent does the proposal minimise undue costs and burdens? This may include the degree to which the outcomes justify the costs to businesses, consumers and government, and how quickly any product investment pays off in terms of monetary savings (for consumers or businesses).

Resilience - How well does the system cope with market variation, change, and pressures? This may include how the proposal keeps pace with product innovation and international market trends.

Fairness and accountability - How well does the system respect rights and deliver good process? This may include how the proposal affects the integrity of the regulatory system, makes it easier to comply, and creates a fair playing field for regulated parties, as well as fair and impartial enforcement.

Each part of this discussion paper outlines the issues with the existing energy efficiency regulatory system in more detail and sets out proposed changes that aim to address these problems. The above criteria will be used to assess the different options. An impact assessment has also been provided at the end of each section.

2 [Capturing the Multiple Benefits of Energy Efficiency](#)

■ Summary table of proposed changes

| PART 1: FUTURE-PROOFING THE SYSTEM | |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | Delegate the prescription of technical MEPS and labelling regulations to the Minister of Energy and Resources. |
| 1.2 | Allow regulations to be made for energy-using systems. |
| 1.3 | Allow MEPS and labels to include requirements which are indirectly connected to energy performance, such as safety requirements. |
| 1.4 | Allow MEPS and labels to include requirements related to demand response capability. |
| 1.5 | Allow MEPS and labels to include greenhouse gas emissions requirements. |
| PART 2: CONSISTENT AND FAIR REGULATION | |
| 2.1 | Regulate any type of supply of regulated products (including by way of exchange, free promotional offers, offers to supply, or supply for commercial use). |
| 2.2 | Clarify that the existing exemption applying to second-hand goods only applies to goods that have been previously sold in New Zealand. |
| 2.3 | Include online sales in labelling requirements. |
| 2.4 | Regularly review the regulatory system to ensure the regulations continue to fulfil their purpose. |
| PART 3: IMPROVING SYSTEM ADMINISTRATION | |
| 3.1 | Allow EECA to pass on sales data to agents carrying out functions for EECA. |
| 3.2 | Allow EECA to grant exemptions from providing statistical information on a case-by-case basis. |
| 3.3 | Allow EECA to grant exemptions from an aspect of the standards on a case-by-case basis. |
| 3.4 | Allow EECA to charge a fee to cover the costs associated with administering the regulatory system. |

PART 4: ENSURING EFFECTIVE COMPLIANCE

| | |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Enhance EECA's monitoring, inspection and investigation powers. |
| 4.2 | Adopt a graduated set of enforcement interventions, including the ability for EECA to: <ul style="list-style-type: none"> › issue stop notices prohibiting traders from selling non-compliant products while it undertakes an investigation, › serve infringement notices for minor offences, › cancel the registration of a non-compliant product, › publish the names of non-compliant individuals or businesses, › enter an enforceable undertaking with a trader who has contravened the regulations, › apply to the court for a banning order, › issue a pecuniary penalty applicable to both real people (such as a director, manager, secretary or similar position) and body corporates, and › seek a court order to have non-compliant products forfeited to the Crown so that they can be disposed of. |
| 4.3 | Increase the maximum penalty level so that it acts as a sufficient deterrent against non-compliance. |
| 4.4 | Clarify that a monetary penalty can be imposed for each breach. |

PART 5: DELIVERING GOOD AND FAIR PROCESS

| | |
|-----|-----------------------------------------------------------------------------------------------------|
| 5.1 | Specify the lead-in time for new or revised standards to come into force. |
| 5.2 | Outline the requirements importers and New Zealand manufacturers need to meet to register products. |
| 5.3 | Outline the check testing policy in guidance material to be referenced in the regulations. |
| 5.4 | Include a process of internal review and a right of appeal in The Act. |

Part 1:

Future-proofing the system

Energy use makes up 41 per cent of New Zealand’s total greenhouse gas emissions.³ Product MEPS have shown that making changes in this area is the easiest and cheapest way to help us achieve our ambitious emissions reduction goals. As a programme that is expected to continue well into the future and face a rapidly evolving market, the regulations need to keep pace with product and market change, and contribute to New Zealand’s transition to a more inclusive, productive and sustainable economy.

At present, the Product and Vehicle Regulations are highly prescriptive and narrow in scope. To keep pace with a rapidly evolving market, many areas of regulation now use approaches that are primarily based on principles. Principles-based regulation refers to including high-level objectives and principles in legislation, without delving into over-prescriptive details.

An advantage of a principles-based regulatory system is that its purpose and objectives are clear in legislation, and the regulator can determine how to achieve the objectives without having to inconvenience Cabinet with detailed technical proposals. The requirements that are included in MEPS and labelling standards are highly technical and require specialist knowledge to write and understand. Currently, Cabinet must take the time to scrutinise the content of highly technical proposals, which is a drain on its time and resources.

There is also a need to consider new types of products that have more than one component or function – energy-using systems – that are becoming more and more prevalent, as well as developments towards ‘smart’ appliances. Further, it is important that products remain safe to operate and aligned with safety requirements and other contingent matters when lifting their performance. We also seek your feedback on the role that MEPS can play in directly addressing greenhouse gas emissions, as the Australian regime does.

We seek your feedback on five proposed changes

| | |
|-----|----------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | Delegate the prescription of technical MEPS and labelling regulations to the Minister of Energy and Resources. |
| 1.2 | Allow regulations to be made for energy-using systems. |
| 1.3 | Allow MEPS and labels to include requirements which are indirectly connected to energy performance, such as safety requirements. |
| 1.4 | Allow MEPS and labels to include requirements related to demand response capability. |
| 1.5 | Allow MEPS and labels to include greenhouse gas emissions requirements |

³ [New Zealand’s Greenhouse Gas Inventory](#)

These proposals are outlined in detail below.

Proposal 1.1

Delegate the prescription of technical MEPS and labelling requirements to the Minister of Energy and Resources.

The Act is written so that the regulations cite local or international standards that set out the MEPS and labelling requirements for given energy-using products. Standards are separately published documents that set out specifications and testing procedures to ensure that products are safe, reliable, and consistently perform the way they are described.

A major challenge is that it takes a long time to develop standards while innovations often progress rapidly. By the time the standard has been researched, consulted on, written and then included in regulations, industry may have developed product innovations that were not considered in the standard development and drafting process.

Similarly, due to improvements in technology, some product classes are no longer manufactured and sold in New Zealand (for example, stand-alone, non-recording, televisions). Their presence in the list of regulated products causes confusion, particularly when it comes to collecting statistical information. To date, no product classes have been removed as they may only be removed by amending the regulations, which takes time and is an unnecessary burden on the Cabinet decision-making process.

The Australian system seeks to address the problem of regulations and standards lagging behind innovations by regulating through a tertiary legislative instrument specific to that product type called a Greenhouse and Energy Minimum Standards (GEMS) Determination. GEMS Determinations give the regulator more flexibility to design product-specific approaches to regulation, as well as the ability to introduce new requirements without amending the primary or secondary legislation. This approach also has the benefit of moving faster than amending regulations.

We propose to introduce a similar type of regulatory system, in which the Minister is empowered to introduce new MEPS and labelling requirements to provide a more efficient avenue for regulating vehicles and products, removing redundant product classes, and make it significantly quicker and easier to maintain alignment with Australia under TTMRA.

In this proposal, The Act would remain in place as the empowering legislation. The Governor-General, would still prescribe the general requirements that manufacturers, importers and retailers must meet, such as the requirement that all regulated products meet minimum energy requirements.

The Minister would directly prescribe the more technical requirements, such as MEPS and labelling requirements for specific energy-using products, vehicles, services and systems. This regulatory system has the benefit of saving time and reducing the burden on Cabinet decision-making as it would not be necessary to go to Cabinet each time a MEPS or label is introduced or updated for a given product class.

We appreciate the value of effective public consultation to ensure the decisions made are robust, well-informed and well-reasoned. Technical MEPS/labelling requirements would continue to be developed in conjunction with stakeholders and would be subject to the same comprehensive public consultation processes that are currently employed before new requirements are introduced or updated.

Questions for stakeholders

- 1.1.a** What issues would need to be taken into account in implementing a system similar to Australia's GEMS determinations?
- 1.1.b** What controls, if any, would you like to see put in place if the prescription of technical MEPS and labelling regulations is delegated to the Minister of Energy and Resources?

Proposal 1.2

Allow regulations to be made for energy-using systems.

The product classes in the Product Regulations revolve around the functions a product performs. Many products are challenging to classify, especially those subject to rapid advancements in technology. Such products are not subject to MEPS and labelling requirements, so there is no incentive for suppliers to remove the supply of poor performing products from the market. This undermines the effectiveness of the system and limits its scope to capture energy and emissions savings for the long-term benefit of consumers and businesses.

Additionally, products with multiple functions (such as fridges with TV screens and 'smart' appliances with internet connectivity) are emerging. These integrated products require additional power and may remain on standby longer than would be needed for just the core product. It is unclear whether such products need to comply with the requirements for each product class, and require a separate registration and label for each standard.

New Zealand's Product Regulations deal with only some components of energy-using systems. Energy may be saved through better installation, more appropriate control systems, accurate design and efficient componentry. While increasing the MEPS of individual components has a vital role to play, applying a systems-based approach would provide additional potential for energy savings.

The international trend of energy efficiency regulation is moving beyond regulating the individual product to a systems-based approach. At the simplest level, efforts have been underway in Europe to introduce standards for "extended products," which extend the boundaries of the product to include other products influencing the performance of the product. In 2009, the European regulations for electric motors were amended to include other products that influence the energy performance of the motor, such as drivers for a motor or type of fan fitted to the motor. More complex policy changes have been introduced in the UK for full ventilation or air-conditioning systems of buildings, which are comprised of a number of individual components and processes.

In the recent review of the Australian regulatory system, the Australian Government signalled its intention to investigate the potential of a systems-based approach to energy efficiency regulation. Additionally, Australia are contributing to research on systems-based regulation being undertaken by the International Energy Agency's (IEA) Programme on Energy Efficient End-Use Equipment. Allowing regulations to be made for energy-using systems in New Zealand would ensure businesses do not have to manage conflicting regulatory systems across the Tasman.

There are unique challenges to adopting a systems approach to MEPS. For example, a systems approach involves more stakeholders than a single manufacturer or importer. This adds special challenges when defining the system, deciding which part of the system to act on, and attributing responsibility for the final measured performance. Despite the challenges, the addition of a complementary systems approach to MEPS would provide more opportunities for improving the energy efficiency of the products and services in New Zealand.

If this proposal is progressed, the regulation-making powers in section 36 of The Act would be amended to include an empowering provision authorising the Minister to prescribe MEPS for energy-using systems.

Questions for stakeholders

- 1.2.a** Do you support the proposal to amend The Act to allow for regulation of energy-using systems? Yes/No. If not, why not?
- 1.2.b** What products would benefit from a systems-based approach to Minimum Energy Performance Standards?
- 1.2.c** What additional costs could be incurred from a systems-based approach?
- 1.2.d** What risks or unintended consequences could occur from a systems-based approach to Minimum Energy Performance Standards?

Proposal 1.3

Allow MEPS and labels to include requirements, which are indirectly connected to energy performance, such as safety requirements.

Minimum energy performance standards often include requirements relating to other matters to ensure that the product can perform effectively (i.e. safely) while meeting energy performance requirements.

Currently, the Product Regulations cover some requirements which are indirectly connected to energy performance, for instance, ensuring an efficient lamp does not contain unsafe levels of mercury. However, The Act does not make it clear whether this is appropriate.

Another example is the proposed light-emitting diode (LED) lamps standard that includes requirements around colour and the lifespan of the product to ensure these are not compromised in meeting the performance requirements.

Clarifying that MEPS and labelling can include requirements that are connected to or affected by energy performance would help to avoid any unintended effects of raising the energy efficiency requirements for a product and better align the New Zealand and Australian systems. It would also clarify whether the inclusion of requirements which are indirectly connected to energy performance, such as safety requirements, is permissible or not.

Extending the scope of the requirements is also consistent with circular economy objectives and could increase the circulatory features of energy-using products by requiring design for reparability.

This proposal would likely require a change to the purpose of The Act.

Questions for stakeholders

- 1.3.a** Should MEPS and labels regulations include requirements indirectly connected to energy performance requirements, such as safety requirements? Yes/No. If not, why not?
- 1.3.b** Would allowing regulations to cover these matters have unintended consequences? If so, what might these consequences be? How could these consequences be mitigated?

Proposal 1.4

Allow MEPS and labels to include requirements related to demand response capability.

Demand response capability is another feature that is indirectly related to the energy performance of a product.

Smart appliances that are equipped with demand response capability enable two-way internet-based communication between appliances and a demand response service provider. Demand-response capability is the ability of a system to change its electricity usage in response to external signals, such as price signals, from third-parties.

Potentially, a third-party demand response service provider could remotely control the energy performance of a household appliance, like an EV charger or hot water heater, during times of peak demand to capture energy, cost and emissions savings on behalf of the consumer.

Consumers can adjust or override such demand response settings, but remote and automated control by a third party allows them to take advantage of energy, cost and emissions savings opportunities without any effort on their part and, potentially, without any noticeable effect on performance. For instance, a demand response service provider may remotely reduce the temperature settings on a 'smart' heat pump during peak periods to reduce energy consumption and costs for the consumer. This can have the added benefit of reducing aggregate demand and avoiding the use of thermal power generation assets, such as gas peakers, during periods of peak seasonal or daily consumer demand.

For New Zealand to get the most benefit from smart appliances (or so-called Internet-of-Things technology), it is important that smart appliances share a set of common connectivity and interoperability standards so that service providers can engage large numbers of consumers and aggregate appliances from different manufacturers. This would also enable consumers to switch between service providers with ease.

Allowing MEPS to include demand response requirements where appropriate for given products, such as electric vehicle (EV) chargers or hot water cylinders, will ensure businesses and consumers can interact with energy markets and the electricity distribution system to capture energy, cost and emissions savings.

This would also future proof the regulatory system to facilitate New Zealand's transition to a low emissions energy sector. For example, meeting New Zealand's peak demand is an ongoing challenge in the decarbonisation of New Zealand's electricity sector. Overseas, smart appliances are increasingly being used to help shift energy demand away from peak periods and to align it with periods of high grid supply (e.g. when solar and wind energy is available).

This proposal would allow the Product and Vehicle regulations to include demand response capability requirements. The potential costs and benefits of requiring demand response capability would be considered on a product-by-product basis.

In developing policy for individual products it will also be important to consider aspects related to effective demand response capability, including alignment with safety regulatory frameworks and issues related to cyber-security.

This proposal would likely require a change to the purpose of The Act.

Questions for stakeholders

- | | |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------|
| 1.4.a | Should we allow MEPS to include requirements related to demand response capability? Yes/No. If not, why not? |
| 1.4.b | Would allowing regulations to cover demand response capability have unintended consequences? If so, what might these consequences be? |

Proposal 1.5

Allow MEPS and labels to include greenhouse gas emissions requirements.

The Review of the regulations in 2019 recommended an amendment to The Act to allow new or amendment regulations to be made that prescribe emission performance and labelling requirements. Emissions labelling would improve consumers' awareness of the volumes of greenhouse gas emissions a product emits. Emission performance requirements (or 'emissions standards') could include requirements to regulate the direct (electricity-related) or indirect emissions from an energy-using product. This amendment would support more holistic consideration of emissions throughout the lifecycle of a product, not only in energy consumption.

For instance, fridges and air-conditioners contain and leak refrigerants. Commonly, hydrofluorocarbons (HFCs) are used. However, HFCs are also potent greenhouse gases. In 2020, New Zealand began phasing out the import of HFCs imported in bulk, in line with our commitment under the Kigali Amendment to the Montreal Protocol to phase down the use of these substances worldwide.⁴

Other countries including the European Union, Japan and Canada have extended their obligations under the Montreal Protocol by placing restrictions on the sale of products containing the most harmful HFCs in instances where there are viable alternatives on the market. The Climate Change Commission's 2021 draft advice recommended that the New Zealand Government also considers extending similar import restrictions to include finished products and recycled bulk HFCs. Allowing MEPS and labels to include requirements and information regarding refrigerants such as HFCs could speed up the transition to technologies that utilise energy efficient refrigerants with lower impact on the atmosphere should they leak.

Emissions standards may also have a role where the overall emissions footprint of a higher performing and more efficient energy-using product, such as a gas-fired hot water cylinder, may have more emissions impact than alternatives, such as electric hot water cylinders. Broadening the purpose of The Act would allow MEPS and labelling requirements to account for such unintended consequences. It would also align with the Australian system.

Since April 2008, it has been mandatory for light vehicles to display Vehicle Fuel Economy Labels (VFEL) when offered for sale by a registered motor vehicle trader. VFELs allow consumers to compare the fuel economy of vehicles (using a six-star rating scale) and their average annual fuel costs. The purpose of the VFEL scheme is to improve the fuel efficiency of new and used light vehicle models imported into New Zealand by providing consumers with comparative fuel economy information at point of sale. This enables more informed purchase decisions, and increased demand for more fuel efficient vehicles.

In January 2021, the New Zealand Government decided to introduce a Clean Car Import Standard to reduce emissions and fuel costs for consumers. Legislation will be passed this year and the standard will begin next year, with the 105 grams of CO₂/km 2025 target being phased in through annual targets that get progressively lower to give importers time to adjust.

To support the roll-out of the Clean Car Import Standard, vehicle fuel labelling information will need to be transitioned to include CO₂ emission information. In the future, the Government could seek to reduce prices on zero and low emission vehicles, and/or place fees on high emission vehicles. While The Act empowers vehicle-labelling regulations, in order to incorporate emissions information and related pricing information on the label, the regulation-making power in The Act would need to be broadened beyond energy performance to include emissions.

⁴ If successfully implemented, the Kigali Amendment is anticipated to avoid up to 0.5 degrees Celsius of global warming by 2100, a significant contribution towards the Paris Agreement's objective of keeping the global temperature rise "well below" 2 degrees Celsius.

| Questions for stakeholders | |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.5.a | Should MEPS and labels include greenhouse gas emissions requirements? Yes/No. If not, why not? |
| 1.5.b | Specifically, do you support amending the regulation-making powers in The Act to allow the inclusion of emissions information (and related pricing information) on vehicle fuel economy labels? Yes/No. If not, why not? |
| 1.5.c | Would allowing regulations to cover greenhouse gas emissions have unintended consequences? If so, what might these consequences be? |

Table 1: Part 1 impact assessment

| Proposal | Impact on energy and emissions savings | Costs to consumers and/or government | Resilient to market changes, variation | Fair, consistent regulatory design |
|---------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| Business as usual | <p>Significant energy and emissions savings are not being captured.</p> <p>Efficiency gains and costs savings across electricity system not captured due to limited 'smart' appliance uptake.</p> <p>Information on emissions impact for given products not easily available to consumers.</p> | <p>Significant costs associated with existing Cabinet decision-making processes for regulatory amendments.</p> <p>Existing regime is extremely effective given existing administrative costs. It has scope to expand its operational reach without increasing administrative costs.</p> | <p>Current system lags significantly behind market and technology changes. Slow implementation of regulatory amendments.</p> <p>The changing nature of energy-using products is not taken into account.</p> <p>Energy performance of product is narrowly defined and applied.</p> | <p>Misalignment with Australian regime.</p> <p>Ambiguity in current regime create uncertainty for regulated parties.</p> |
| 1.1 Delegate the prescription of technical MEPS and labelling regulations to the Minister of Energy and Resources. | <p>Capture emissions and energy savings faster.</p> | <p>Reduces burden on Cabinet decision-making.</p> | <p>Regulations can be updated as product design progresses and accurately reflect the market.</p> | <p>Irrelevant regulations can also be removed more rapidly as needed.</p> |
| 1.2 Allow regulations to be made for energy-using systems. | <p>Expands scope of regulations to capture more of the market and therefore increase in-scope emissions and energy savings.</p> | <p>Allow regulations to be used for broader range of products/ services avoiding need for additional regulation and associated costs.</p> | <p>Proposal reflects evolving product design.</p> | <p>Removes barrier to regulating products that are hard to categorise.</p> |

| | | | | |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1.3 Allow MEPS and labels to include requirements connected to energy performance, such as safety requirements.</p> | | <p>Covering related requirements, including safety, within MEPS reduces overall regulatory burden.</p> | <p>Ensure safety or other product features not compromised by energy performance.</p> | <p>Aligned and consistent with other relevant regulations and regulatory systems and their policy intent (e.g. health and safety).</p> |
| <p>1.4 Allow MEPS and labels to include requirements related to demand response capability.</p> | <p>Demand response has energy system-wide energy and emissions savings benefits.</p> <p>Captures opportunity for energy and emissions savings from smart appliances.</p> | <p>Demand response enables improved product performance and reduced consumer bills across energy system.</p> <p>Avoids need for additional regulation or new regulatory scheme</p> | <p>Proposal reflects evolving product design and emergence of 'smart' appliances'.</p> | <p>Regulation of energy-related performance aspects of consumer products remain within one regulatory scheme.</p> <p>Regulation of energy-related performance expanded to introduce necessary standards for smart appliances (i.e. connectivity and interoperability.)</p> |
| <p>1.5 Allow MEPS and labels to include greenhouse gas emissions requirements.</p> | <p>Increased consumer awareness of product emissions impact.</p> <p>Offers means to directly regulate product emissions.</p> <p>Allow the regulations to increase energy efficiency of products without compromising on emissions and vice-versa.</p> | <p>May increase regulatory burdens and costs, which could otherwise accrue elsewhere in government.</p> <p>Represents extremely cost-effective means to reduce emissions via energy efficiency with net economic benefits.</p> | <p>Responds to possibility that high energy performance does not match with lowest possible emissions footprint for given products.</p> <p>Recognises intent inherent in reducing energy consumption to also reduce emissions as well as energy costs.</p> | <p>Aligns with Australian regime.</p> <p>Seeks to align regulations with our climate change goals and legislation.</p> |

Part 2:

Consistent and fair regulation

There are some loopholes or inconsistencies in the way the Product Regulations currently apply to products and services. This makes it difficult for manufacturers, importers and traders to ensure they are complying with requirements. It also enables some traders to avoid regulatory compliance. These issues have emerged since 2002 when the regulations were first introduced and ought to be addressed to ensure a consistent and fair regulatory system.

Additionally, the internet has seen a drastic change in the way consumers find and purchase goods and the type of arrangements manufacturers and importers have with consumers has evolved in kind. Given the changes to the market, it is important that the regulations are updated so EECA is better equipped to respond to them.

We seek your feedback on four proposed changes

| | |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 | Regulate any type of supply of regulated products (including by way of exchange, free promotional offers, offers to supply, or supply for commercial use). |
| 2.2 | Clarify that the existing exemption applying to second-hand goods only applies to goods that have been previously sold in New Zealand. |
| 2.3 | Include online sales in labelling requirements. |
| 2.4 | Regularly review the regulatory system to ensure the regulations continue to fulfil their purpose. |

These proposals are outlined in detail below.

Proposal 2.1

Regulate any type of supply of regulated products (including by way of exchange, free promotional offers, offers to supply, or supply for commercial use).

The Product Regulations currently only cover the supply of an energy-using product by way of sale, lease, hire or hire purchase. The Regulations are enforced at point-of-sale. However, consumer behaviour has changed since the regulations were passed and many products are now offered and supplied online or directly from the manufacturer.

For example, it is common for businesses to import products directly from a manufacturer for commercial purposes. A developer might import products for installation in an apartment or commercial property (such as air conditioning, hot-water cylinders, lighting systems and refrigeration). Where these would otherwise be subject to the requirements in the regulations, because they are imported for commercial purposes (and not sold to a consumer) the developer is able to import products that do not meet the requirements of the regulations.

This practice undermines the integrity of the system as businesses can bypass the restrictions on the importation of non-compliant products. This is also problematic for third parties, such as those purchasing or leasing the property. The property developer who arranged the initial installation does not pay the operating costs and the consequences of the inefficient product is passed on to the occupants' energy bill.

Give-aways of a new product (such as part of a promotional campaign) is a common marketing tactic to promote the new product to consumers. These promotions are also not subject to MEPS and labelling requirements. Similarly, consumers are often exposed to products that are not currently for sale in New Zealand - products that do not meet the minimum requirements under the regulations can be displayed at trade shows or advertised in catalogues from overseas suppliers. They are sometimes encouraged to purchase products directly from the overseas supplier. This may lead to non-compliant products being brought into the country by unsuspecting consumers.

We propose ensuring all regulated products are required to meet the requirements no matter how they are supplied.

This will also expand the types of business who are required to provide EECA with statistical information. Expanding the sources of data about the supply of regulated products will be invaluable for accurately measuring the energy savings from the MEPS programme.

Questions for stakeholders

- 2.1.a** Do you support the proposal to ensure products supplied by any means must meet the requirements of the regulations? Yes/No. If not, what type of supply should be excluded and why?
- 2.1.b** Do you think there would be any unintended consequences from this proposal?

Proposal 2.2

Clarify that the existing exemption applying to second-hand goods only applies to goods that have been previously sold in New Zealand.

In light of the above proposal to cover all supply of regulated products, section 11 of the Product Regulations provides that the MEPS and labelling requirements do not apply to second-hand items. The exemption for second-hand items recognises that the energy efficiency of a product reduces over time, and it is not practical for businesses to test second-hand items before they are sold.

However, the exemption could be interpreted as justification for the import of poor performing second-hand items from abroad, which may not be an optimal outcome.

We propose for the exemption to second-hand goods to apply only to items that have been previously used by a New Zealand consumer and not imported into New Zealand. This proposal also mitigates the risk that New Zealand becomes a global dumping ground for inefficient second-hand products.

Questions for stakeholders

- 2.2.a** Do you support the proposal to clarify the restriction that the exemptions to second-hand goods to products previously sold in New Zealand? Yes/No. If not, why not?
- 2.2.b** Do you think this proposal would create any unintended consequences or risks?

Proposal 2.3

Include online sales in labelling requirements.

Currently, seven product classes are subject to mandatory labelling requirements: clothes washing machines, computer monitors, dishwashers, household refrigerating appliances, rotary clothes dryers, single-phase non-ducted air conditioners and air-to-air heat pumps, and television sets.

Labelling requirements in the Product Regulations do not mandate 'labelling' on products sold on the internet. While this was not as relevant when the regulations were first published as only 10 per cent⁵ of New Zealanders shopped online, however, 66 per cent⁶ of New Zealanders reported shopping online in 2017. Even for people who do not make purchases online, the internet is a key source of information about products and offers.

Retailers are responsible for ensuring that regulated products available for sale or lease carry a label. The label must be of the general appearance and layout specified in the relevant standard or section and accurately reflects the product's make and model. While the Product Regulations are clear that this requirement applies to physical displays, it is unclear whether it also applies to products sold online. This uncertainty limits the effectiveness of the labelling scheme as consumers increasingly search and make purchases online.

Recent work commissioned under the trans-Tasman E3 programme that EECA collaborates on with its Australian counterparts found that energy rating information at the online point-of-purchase influenced consumers' purchasing decisions:

- › Customers who are exposed to energy rating information choose more energy efficient products.
- › The Energy Rating Icon⁷ is more effective than text only information, especially when shown at both consideration and choice stages.
- › The simplified version of the energy-rating label is generally understood.

Increasingly, consumers purchasing appliances online are provided with energy efficiency information by the retailer. Although this information is regulated under the Fair Trading Act 1986, mandatory labelling would provide a more recognisable, consistent and credible source of energy efficiency information.

Section 12 of the [Consumer Information Standards \(Water Efficiency\) Regulations 2010](#) provide a template for regulating information requirements when products are offered for supply online.

We propose a similar section for the regulations, which would provide two options for traders. First, traders would be able to display a reproduction of the label. Alternatively, traders would be able to list the relevant information. This would accommodate webpages that would be disrupted by the display of the label (such as on a mobile site).

Questions for stakeholders

- 2.3.a** Do you support the proposal to make displaying the energy performance label mandatory for products advertised for sale online? Yes/No. If not, why not?
- 2.3.b** What are the potential benefits or costs of this proposal?
- 2.3.c** Do you think this proposal would create any unintended consequences or risks?

⁵ [New Zealand online retail report 2013](#)

⁶ New Zealand connected consumers report 2017

⁷ The energy rating icon is an abridged version of the physical label that can be displayed online.

Proposal 2.4

Regularly review the regulatory system to ensure the regulations continue to fulfil their purpose.

According to the Productivity Commission, New Zealand does not have strong processes for reviewing regulatory systems. While the MEPS and labelling requirements are regularly reviewed through the E3 programme and Australian and New Zealand Standards review processes, there is no requirement to review the overall system. This issue is emphasized by the problems highlighted in this discussion paper and The Review that preceded it in 2019. The lack of regular reviews creates a risk that the regulations would become obsolete and fail to keep up with market changes and technological advances. This may weaken the respect regulated parties have for the system, reduce public confidence and ultimately lead to regulatory failure.

In Australia, it is a statutory requirement that the GEMS Act is reviewed every 10 years. Introducing a similar review period would ensure the regulations continue to fulfil their purpose. We propose including this requirement in The Act, which would align the system with Australia and assure industry they have a process and timeframe within which to raise concerns. It may also make sense to align with a review of the five-yearly New Zealand Energy Efficiency and Conservation Strategy and/or five-yearly emissions budget periods under climate change legislation.

Questions for stakeholders

- 2.4.a Do you think the regulatory system should be reviewed regularly?
- 2.4.b How often should it be reviewed? Why do you think it should be reviewed at this frequency?
- 2.4.c Should a review of the energy efficiency regulatory system be aligned with other statutory review periods, such as the New Zealand Energy Efficiency and Conservation Strategy or emissions budget periods?

Table 2: Part 2 impact assessment

| Proposal | Impact on energy and emissions savings | Costs to consumers and/or government | Resilient to market changes, variation | Fair, consistent regulatory design |
|---------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Business as usual | <p>Significant energy and emissions savings are not being captured.</p> <p>Energy efficiency information infrequently provided to online consumers.</p> | <p>Cost savings opportunities for consumers are missed.</p> <p>Difficulty ensuring compliance despite ambiguities may be increasing compliance costs for some regulated parties. Or regulated parties may currently avoid compliance costs due to ambiguities in current regime.</p> <p>EECA initiated and covered cost of 2019 regulatory review.</p> | <p>Current system lags significantly behind market including differing and evolving means to buy/sell products.</p> <p>No existing process to ensure regime is reviewed so that regulations remain fit-for-purpose. EECA initiated the first review, in 2019, since regulations were introduced in 2002.</p> | <p>Misalignment with Australian regime.</p> <p>Current system contains loopholes whereby certain traders/importers need not comply.</p> <p>Ambiguities in current regime create uncertainty for regulated parties.</p> |
| 2.1 Regulate any type of supply of regulated products (including by way of exchange, gift, loan, offers to supply, or supply for commercial use). | <p>Captures more of the market delivering greater emissions and energy savings.</p> | <p>Exclusion of poor-performing products has net monetary benefits over life of product.</p> | <p>Reflects range of means to supply products/services to market.</p> | <p>Protects integrity of regulatory system; easier to comply; fairer playing field.</p> <p>Clarity and certainty for suppliers that requirements cover all types of supply.</p> |

| | | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>2.2 Clarify that the existing exemption applying to second-hand goods only applies to goods that have been previously sold in New Zealand.</p> | <p>Captures more of the market delivering greater emissions and energy savings.</p> | <p>Exclusion of poor-performing products has net monetary benefits over life of product.</p> | <p>Reflects means to supply second-hand products to market.</p> | <p>Protects integrity of regulatory system; easier to comply; fairer playing field.</p> <p>Clarity and certainty for suppliers that requirements cover all types of supply.</p> |
| <p>2.3 Include online sales in labelling requirements.</p> | <p>Captures more of the market delivering greater consumer awareness of products' energy performance.</p> | <p>Added cost for businesses to meet labelling requirements for online sales.</p> | <p>Reflects increase in online shopping and high number of online sales.</p> | <p>Clarity and certainty for suppliers that labelling requirements cover all types of supply including online sales.</p> |
| <p>2.4 Regularly review the regulatory system to ensure the regulations continue to fulfil their purpose.</p> | <p>Review can ensure the system remains effective and provides an opportunity to expand its scope to capture greater emissions and energy savings.</p> | <p>Review would entail costs for government.</p> | <p>Keep regulatory system up to date as products and markets evolve.</p> | <p>Regularly review to ensure system remains fair, appropriate and fit-for-purpose.</p> |

Part 3:

Improving system administration

The difficulties EECA comes across when administering the regulations highlight how complex and rapidly developing the field of energy efficiency is. The Product Regulations now capture 20 different products. Some technologies have evolved to be unrecognisable from when the regulations were written. Some products have been entirely superseded by other technologies and are no longer manufactured or sold in New Zealand.

Further, EECA often employ contractors to provide support at all levels of regulation, from research during the policy stage to testing products to ensure they meet the required standards. At present, EECA is restricted from passing on sales data to these contractors that support its work.

We seek your feedback on four proposed changes

| | |
|-----|----------------------------------------------------------------------------------------------------|
| 3.1 | Allow EECA to pass on sales data to agents carrying out functions for EECA. |
| 3.2 | Allow EECA to grant exemptions from providing statistical information on a case-by-case basis. |
| 3.3 | Allow EECA to grant exemptions from an aspect of the standards on a case-by-case basis. |
| 3.4 | Allow EECA to charge a fee to cover the costs associated with administering the regulatory system. |

These proposals are outlined in detail below.

Proposal 3.1

Allow EECA to pass on sales data to agents carrying out functions for EECA.

EECA often works with external researchers to identify energy consumption trends associated with specific products, which helps drive energy efficiency going forward. Under The Act, 'raw' sales data cannot be shared with anyone outside the organisation. When working with external researchers EECA processes the data to provide the information they request. The researchers often miss things or identify other areas of interest, which results in further information requests. This process is time-consuming and inefficient from EECA and its contractors.

Permitting EECA to share sales data with people who are carrying out their functions would be a better use of time and resources and ensure the work carried out for EECA is high quality.

We recognise the importance of protecting the privacy of people who may be identifiable by this information. Agents carrying the functions for EECA would be expected to comply with EECA's records management policy and the Privacy Act 2020.

Questions for stakeholders

- 3.1.a** Do you support the proposal to allow EECA to share data with agents carrying out functions for them? Yes/No. If not, why?
- 3.1.b** Would sharing information with agents carrying out functions for EECA have unintended consequences? If so, what might these unintended consequences be and how might they be mitigated?

Proposal 3.2

Allow EECA to grant exemptions from providing statistical information on a case-by-case basis.

Each year, importers and New Zealand manufacturers are required to provide information for statistical purposes, including the number of items of each model that are sold in, exported from or imported into New Zealand. Since most businesses gather end-of-financial-year sales data for business purposes, traders need to provide this information within four months of the end of the financial year.

The provision of statistical information is important for measuring energy efficiency progress within the New Zealand marketplace. The information that is gathered is also used to predict energy consumption trends, which enables EECA and other government agencies to target their energy efficiency and conservation programmes. However, the costs to industry associated with providing statistical information need to be balanced against the benefits of acquiring the data.

Allowing EECA to grant exemptions from the requirement to provide statistical information would provide the flexibility appropriate for the wide variety of traders. Exemptions would typically be provided to traders that manufacture or import very small numbers of products. While registering with EECA and providing sales data would be a burden for these traders, the data from these businesses is unlikely to have an effect on the reported energy savings. Detailed guidance material would be published on EECA's website, outlining the exemption criteria and providing instructions on how to apply.

Questions for stakeholders

- 3.2.a** Should EECA grant exemptions from the requirement to provide statistical information? Yes/No. If not, why?
- 3.2.b** What criteria, if any, should be considered for exemptions to providing statistical information? What might be an appropriate threshold for an exemption?
- 3.2.c** What could be the unintended consequences or risks if some businesses were exempted from providing statistical information?
- 3.2.d** What savings might accrue to businesses if exemptions were granted?

Proposal 3.3

Allow EECA to grant exemptions from any aspect of a standard on a case-by-case basis.

Certain categories of products are currently exempt from the requirements of MEPS and labelling, namely (i) products destined for export or in transit and (ii) second-hand products. In addition, where only 50 or fewer products are imported into New Zealand, a person can apply to EECA for an exemption from labelling requirements.

EECA is not permitted to grant exemptions in other circumstances, such as where businesses require products with specifications falling outside the relevant MEPS (such as an industrial air conditioner for use in a mine). In addition, the compliance process is not appropriate for products with a short market life (such as seasonal products where any delay in getting the product to market would affect potential sales) or unique/bespoke products. In such cases, there is often a lack of laboratory capacity in New Zealand to test the products for compliance.

Allowing EECA to grant exemptions on any aspect of the standards on a case-by-case basis would benefit both EECA and traders, and align the system more closely with Australia's GEMS Act. To mitigate the effect exemptions would have on the system, EECA would be able to specify conditions relating to how exempt products are to be labelled, supplied, or commercially used (for instance, a condition could be that EECA needs to be satisfied that the product will only be used for a specified purpose).

Questions for stakeholders

- 3.3.a** Is the current threshold and process for exemptions appropriate for all circumstances?
- 3.3.b** Are there any circumstances for which the current threshold and process for exemptions would not be appropriate?
- 3.3.c** Do you support the proposal to allow EECA to grant exemptions on a case-by-case basis? Yes/No. If not, why?
- 3.3.d** What controls would you like to see for granting exemptions?
- 3.3.e** How might an appropriate threshold be determined?

Proposal 3.4

Allow EECA to charge a fee to recover the costs associated with administering the regulatory system.

Questions for stakeholders

- 3.4** Do you support the proposal to permit EECA to charge an administrative fee for the regulatory system for cost recovery purposes? Yes/No. If not, why?

Table 3: Part 3 impact assessment

| Proposal | Impact on energy and emissions savings | Costs to consumers and/or government | Resilient to market changes, variation | Fair, consistent regulatory design |
|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Business as usual | Due to restriction on sharing sales data, external researchers cannot assist EECA to identify energy consumption and efficiency trends to respond to market effectively and target interventions for greater emissions and energy savings. | Unnecessary compliance costs currently accrue to businesses. EECA cannot charge a product registration fee to recover costs of administering regulatory system, and must fund this from within its current budget. | EECA unable to share sales data with agents acting on its behalf. Unique nature of some energy-using products is not taken into account. | Misalignment with Australian regime. No registration fees are charged in NZ, but fees are charged in AU. No all information is statistically relevant, but is collected regardless. EECA must gather data and enforce requirements for all regulated parties exactly the same (one-size-fits-all approach) despite the unreasonable burden it may represent for unique or smaller regulated parties. No exemptions exist. |
| 3.1 Permit EECA to pass on sales data to agents carrying out functions for EECA. | Identify energy consumption and efficiency trends to respond to market effectively and target interventions for greater emissions and energy savings. | Reduces the cost of administering the system for government. | Enables EECA to gather information needed to administer and enforce the regulations. | |

| | | | | |
|---------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>3.2 Permit EECA to grant exemptions from providing statistical information on a case-by-case basis.</p> | | <p>Reduces the unnecessary compliance costs to businesses.</p> | <p>Takes into account the unique nature of different products.</p> <p>Provides flexibility for the unintended impacts of the requirement to provide statistical information.</p> | <p>Delivers reasonable enforcement of the requirement to provide statistics.</p> <p>Appropriate exemptions would build trust with industry and facilitate compliance.</p> |
| <p>3.3 Permit EECA to grant exemptions from an aspect of the standards on a case-by-case basis.</p> | | <p>Reduces the unnecessary compliance costs to businesses.</p> | <p>Takes into account the unique nature of different products.</p> <p>Provides flexibility for the unintended impacts of MEPS on niche products.</p> | <p>Delivers reasonable enforcement of the requirements.</p> <p>Appropriate exemptions would build trust with industry and facilitates compliance.</p> |
| <p>3.4 Allow EECA to charge a fee to cover the costs associated with administering the regulatory system.</p> | | <p>Reduces the cost of administering the system for government.</p> <p>Regulated industry to help cover costs of the regulatory system.</p> <p>Increase in cost to traders that register in New Zealand.</p> | <p>Covers on-going costs of the system as it changes with the market conditions.</p> | <p>Fairness amongst regulated traders that use the trans-Tasman registration system.</p> |

Part 4:

Ensuring effective compliance

Minimum Energy Performance Standards are EECA's most effective energy efficiency programme. The task of managing compliance is critical to the success of the MEPS programme. EECA monitors and enforces compliance with the regulations through four distinct, but inter-related activities:

- › Engagement and advisory activities to assist traders to comply with their voluntary obligations under the system.
- › Market monitoring and compliance activities to ensure products on display in retail premises meet the MEPS and labelling requirements.
- › Check testing models of regulated products to ensure they meet the relevant energy efficiency requirements.
- › Investigating cases of non-compliance, including consumer complaints, and gather evidence to assist potential prosecutions.

In addition to helping traders understand and meet their obligations, these activities promote compliance with the regulations. They improve EECA's awareness and understanding of business processes and technology, and how they influence industry behaviour. They also enable EECA to build rapport and confidence with industry.

According to the Department of Internal Affairs' [Guide for Compliance Agencies in New Zealand](#) (DIA's guide), an effective compliance strategy focuses on risk, proportionality, and outcomes. By using a systematic approach to risk management, a compliance agency can

- › identify, analyse, and quantify risk;
- › prioritise risk, based on an assessment of its likelihood and potential consequences; and
- › plan and conduct activities to eliminate or mitigate risk.

Achieving compliance with a strategy centred on risk requires the proportionate and flexible use of enforcement interventions. As the majority of parties comply with the regulations, low-level measures focused on providing accessible information and education are the most effective and cost-effective ways to achieve compliance.

However, EECA cannot currently gather all the necessary evidence to put together a complete picture of the regulatory environment. Moreover, EECA does not have the range of tools that are necessary for responding to the different levels of non-compliance.

We seek your feedback on four proposed changes

| | |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Enhance EECA's monitoring, inspection and investigation powers. |
| 4.2 | Adopt a graduated set of enforcement interventions, including the ability for EECA to: <ul style="list-style-type: none"> › issue stop notices prohibiting traders from selling non-compliant products while it undertakes an investigation, › serve infringement notices for minor offences, › cancel the registration of a non-compliant product, › publish the names of non-compliant individuals or businesses, › enter an enforceable undertaking with a trader who has contravened the regulations, › apply to the court for a banning order, › issue a pecuniary penalty applicable to both real people (such as a director, manager, secretary or similar position) and body corporates, and › seek a court order to have non-compliant products forfeited to the Crown so that they can be disposed of. |
| 4.3 | Increase the maximum penalty level so that it acts as a sufficient deterrent against non-compliance. |
| 4.4 | Clarify that a monetary penalty can be imposed for each breach. |

These proposals are outlined in detail below.

Proposal 4.1

Enhance EECA's monitoring, inspection and investigation powers.

Regulations are an effective tool for promoting energy efficiency. However, their impact depends on effective implementation and compliance, both in terms of process (such as importers and manufacturers providing the necessary documentation) and performance (such as products complying with MEPS). Monitoring and investigation is an important mechanism for encouraging compliance.⁸

To assess compliance with the regulations, EECA needs to form a view on whether a product or vehicle meets the relevant MEPS and/or labelling requirements. Given the nature of the sectors that are regulated, EECA physically monitor products to ensure they are correctly labelled and meet appropriate MEPS levels.

Currently, EECA's compliance officers rely on an implied licence to be on retail premises, which means the owner or occupier of the premises may withdraw that license at any time and ask them to leave. This affects their ability to carry out their functions, including gathering evidence of non-compliance that would form the basis of further investigation or enforcement action. The absence of these powers may also lead to inconsistencies between compliance officers regarding when, why and how they detect and respond to infringements.

Once a compliance officer suspects an individual or business has not complied with the regulations, they need to investigate. However, The Act does not provide EECA with any powers of investigation, which makes it difficult for the compliance officer to gather evidence relating to the case. During its investigations, EECA may have cause to believe that concealed non-compliant products are stored within a container, vehicle or dwelling. However, any suspicions cannot be confirmed without the power to enter and undertake inspections.

One means to collect evidence would be to allow other government agencies to share information with EECA that helps identify any importer, manufacturer, or person who sells regulated products directly to consumers. This would enable better monitoring and compliance enforcement.

8 [Enforcement of energy efficiency regulations for energy consuming equipment: findings from a new European study](#)

We understand that the introduction of new powers warrants careful consideration: monitoring, inspection and investigation activities can trespass unduly on personal liberties and rights. However, the ability to undertake monitoring, inspection and investigation activities is a feature of other product regulation systems (for example, the Commerce Commission).

When EECA identifies matters that may warrant investigation, it is proposed that EECA's Chief Executive would issue a formal notice of investigation. Where possible, rather than open an investigation, EECA should first take low-level steps to resolve the issues underlying an issue, such as education or informal warning notices.

Once a notice of investigation is issued, a compliance officer would be able to enter and inspect a place⁹ (not being a private house) without a warrant, for the purpose of monitoring or enforcing compliance with the regulatory system:

- › With respect to any regulated goods at the place that are available to consumers for supply or are dispatched for supply to consumers, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale.
- › Require the person who appears at the time to be in charge of the supply of goods at the place (the person in charge) to give their name and show identification to the compliance officer.
- › Require the person in charge to identify the person from whom the suspect goods were acquired.
- › Require the person in charge to give the authorised employee any information about the goods or services that is normally disclosed to a consumer.
- › If suspect goods have been supplied in trade to another person, require the person in charge to identify the person or persons to whom they have been supplied.
- › Issue a suspension of supply notice, if the compliance officer knows, or believes on reasonable grounds, that the goods do not comply with the regulations.
- › Require any person by whom any relevant goods are carried for delivery pursuant to, or in connection with, a contract for sale, to give
 - a. his or her name and address
 - b. the name and address of his or her employer (if any)
 - c. the name and address of the owner of the goods, if known.

If it is necessary for an investigation, EECA may require a person to supply EECA any information or documents specified in the notice or to appear before EECA at a specified time and place to give evidence or supply documents.

In the most serious case, if a compliance officer is investigating whether a person has contravened The Act or the nature or extent of the contravention, EECA would be able to authorise a compliance officer to search, under a warrant issued by an issuing officer,¹⁰ any dwelling named in the warrant. If a compliance officer enters a dwelling with the permission of the occupier or under a warrant, they may exercise the powers listed above.

⁹ Meaning any place that a compliance officer believes on reasonable grounds is a place at which consumers have access to relevant goods or services, or from which relevant goods are dispatched to consumers. This is consistent with section 33C of the Fair Trading Act 1986, which empowers product safety officers.

¹⁰ Within the meaning of section 3 of the Search and Surveillance Act 2012.

The enhanced monitoring, inspection and investigation powers are not expected to require increased costs or resourcing as EECA is already resourced in this area. Rather, it introduces more enabling powers for existing compliance officers to better perform their roles. EECA intends to cover any unforeseen cost increases (e.g. further resourcing) from within existing baselines.

Questions for stakeholders

- 4.1.a Do you agree with the proposal to enhance EECA's monitoring, inspection and investigation activities? If not, which activities do you disagree with?
- 4.1.b Have you encountered instances of concealed non-compliant products? Yes/No. If yes, could you please detail your experience?
- 4.1.c In regards to the most serious cases, is allowing an EECA compliance officer search powers (issued under a warrant) a proportional response?
- 4.1.d Are there alternative solutions to the problem of concealed non-compliant products? Yes/No. If yes, what are they?
- 4.1.e Do you perceive any unintended consequences or unforeseen risks as a result of this proposal?

Proposal 4.2

Adopt a graduated set of enforcement interventions, including the ability for EECA to:

- › issue stop notices prohibiting traders from selling non-compliant products while it undertakes an investigation,
- › serve infringement notices for minor offences,
- › cancel the registration of a non-compliant product,
- › publish the names of non-compliant individuals or businesses,
- › enter an enforceable undertaking with a trader who has contravened the regulations,
- › apply to the court for a banning order,
- › apply for the court to issue a pecuniary penalty applicable to both real people (such as a director, manager, secretary or similar position) and body corporates, and
- › seek a court order to have non-compliant products forfeited to the Crown so that they can be disposed of.

An effective compliance system needs to provide the regulated sector with incentives to comply voluntarily. If the cost of remedying non-compliance after the agency detects it is the same or less than the cost of a voluntary compliance programme, it is inevitable that part of the sector will wait to be detected before complying. In Australia, the GEMS Act provides the GEMS Regulator with educative, administrative, civil, and criminal enforcement response options:

- › Suspending a model's registration.
- › Cancelling a model's registration.
- › Enforceable undertakings.
- › Infringement notices.
- › Civil penalty orders.
- › Injunctions.

Currently in New Zealand, any breach of the regulations is a strict liability criminal offence. Successful prosecution can lead to a maximum penalty of a fine of up to \$10,000 for breaching the Product Regulations and \$5,000 for breaching the Vehicle Regulations.

While prosecution is a critical tool for handling the most serious cases, in most cases the type of conduct that EECA seeks to address is not 'truly criminal' and does not have a strong element of moral blameworthiness commonly associated with criminal offending. Additionally, initiating a prosecution entails significant costs associated with preparing and conducting the case.

Stakeholders have previously suggested the penalty available to EECA is insufficient to deter non-compliance. Similarly, The Review concluded that EECA has very limited powers to ensure industry compliance with the regulations. Non-compliance erodes the integrity of the system and dissuades participants from taking the necessary care to ensure compliance with their obligations.

The Department of Internal Affairs' guide advises that a compliance strategy draw on a range of options for responding to non-compliance. An effective regulatory system needs to contain flexible enforcement tools that enable a tailored approach to the circumstances and ensure enforcement actions are proportionate to the severity of the misconduct. In addition to prosecution, EECA are proposing a number of enforcement interventions.

a) Stop notices

Although EECA can issue warning letters, it should also have the ability to issue a notice prohibiting traders from selling non-compliant products while it undertakes an investigation. In such a case, the failure to comply with the notice would be an offence. This measure would enable the temporary removal of non-compliant and potentially unsafe products from the supply chain in a safe manner whilst an investigation is underway to prevent any further harm.

b) Infringement notices

Infringement schemes are widely used by other operational agencies and are considered a proportionate response to minor offending as they avoid court proceedings and the need to prove all the elements of the offence. Infringement notices are a quick and efficient enforcement tool used to penalise people for clear-cut, minor breaches of their statutory obligations.

Most breaches of the regulations are minor and sometimes inadvertent, such as incorrect labelling. Allowing compliance officers to serve infringement notices to offenders would provide a proportionate response to the harm caused by non-compliance and would be a convenient and low-cost way to deal with minor offending. As an example, non-compliance with labelling requirements is an offence under the Product Regulations and is relatively common compared to other offences, with traders neglecting to display the labelling. The cost of taking an offender to court can often outweigh the gravity of the offending. The alleged offending is usually minor and does not cause major consumer detriment, but if left unaddressed it could lead to more serious and repeated offending. If EECA had the ability to issue a relatively small fee for this offence, it would encourage compliance with the regulations and promote the public's confidence in the system.

The Law Commission,¹¹ the Legislation Design and Advisory Committee¹² and the Ministry of Justice¹³ suggest a number of factors to be considered when determining the amount of an infringement penalty:

- › That maximum fines range between \$500 and \$1,000.
- › The fine needs to outweigh the possible benefits of non-compliance.
- › The fine should bear some proportion to the average likely penalty imposed by a court when a defendant is found guilty of the same offence.
- › The fine should be discounted to take into account the fact that a defendant is admitting some degree of guilt by paying the fine. The usual discount applied by the court for a guilty plea is one-third.

¹¹ [The Infringement System: A Framework for Reform](#)

¹² [Creating infringement offences](#)

¹³ [Policy framework for new infringement schemes](#)

- › Regard should be given to the level of risk or harm posed by the misconduct.
- › The fine should bear some proportion to the maximum penalty for conviction of the standard offence.

We propose a maximum infringement notice of \$1,000 for a body corporate, and \$500 for an individual. Any infringement notices would be set out in a prescribed form (containing prescribed particulars) and served on the offender personally or by post. EECA would have the ability to review and cancel the infringement notice in the interests of justice.

Because infringement notices remove the right for a person to be tried and heard in a court before being fined, it is important that the process is fair and includes protections for defendants. New Zealand has a standardised process for infringement offences and notices set out in the Summary Proceedings Act 1957, which includes a standard process for the collection of infringement fines and minimum protections for defendants.

c) Cancel product registration

At present, EECA is not permitted to cancel a registration if a model is found to be non-compliant with the relevant standard. In Australia, the GEMS Regulator can suspend or cancel the registration of models that are found to be non-compliant and publicise the suspension or cancellation. We propose to introduce the same powers, with appropriate avenues for appeal.

d) Publication of non-compliant dealers

The regulations do not permit EECA to publish the names of traders who have contravened the regulations. As a result, consumers are not able to find which traders may be distributing non-compliant products. Allowing EECA to publish the names of offenders would provide transparency and allow consumers to make effective, informed purchasing decisions.

Additionally, publishing the names of offenders is an effective non-intrusive intervention. Reputation loss may pose a more significant regulatory threat than the monetary penalty that businesses (particularly large corporations) may face for non-compliance. Such an enforcement measure is found in the GEMS Act and comparable overseas jurisdictions and is a feature of other domestic systems for product regulation.

e) Enforceable undertakings

An enforceable undertaking allows an offender to enter into a binding agreement with the relevant regulator as an alternative to prosecution. The agreement outlines actions the duty holder will undertake to address the infringement. An enforceable undertaking is not imposed on the duty holder. They must express interest and apply. The regulator then considers whether it agrees with the proposal detailed in the application and decides whether to accept the application.

The regulator is not compelled to do so. However, once accepted, the undertaking is legally binding – a breach of an enforceable undertaking is a stand-alone offence.

By avoiding the costs associated with taking a prosecution, enforceable undertakings would allow EECA to divert resources to other initiatives to improve energy efficiency. This would also benefit industry as enforceable undertakings avoid costly and time-consuming legal proceedings. This measure would also allow non-compliant but repentant traders to maintain their reputation. Enforceable undertakings are found in comparable systems overseas and are a feature of some domestic systems for product regulation. There may be administration costs associated with monitoring the agreement.

The need for legislative recognition of court enforceable undertakings is evidenced by a recent agreement EECA entered into with a large retail store chain in 2019 in relation to an alleged breach of the regulations. It was decided that the best possible outcome was to enter into a negotiated agreement, rather than commence lengthy and uncertain litigation. Under the agreement, the parties acknowledged that some of their conduct might have breached the regulations. The result was a substantial financial settlement, with consumers partially refunded for the misrepresentation of the product they purchased. The parties to the agreement have fulfilled their obligations under the agreement, but any breach would have been unenforceable under the current system.

To avoid the uncertainty of informal agreements, The Act would be amended to give EECA the power to accept written undertakings in connection to matters related to the enforcement of the regulations made under section 36 of The Act. If EECA considers that an undertaking has been breached, it may apply to the court for an order requiring a party to the undertaking to comply with a term of the undertaking, pay money to the Crown or compensate others for loss or damage caused by the breach.

f) Banning order

Banning orders are a tool available to the courts under some legislation to ban individuals from certain activities for specified lengths of time. The purpose of banning orders is to prevent the public from suffering detriment due to the ongoing misconduct of a deliberate wrongdoer or incompetent individual who continues to act unlawfully or unfairly even after they have been convicted and fined. We propose allowing a court to issue a banning order against a person who persistently breaches the regulations.

g) Pecuniary penalty

The system could include a pecuniary penalty, which is a non-criminal monetary penalty imposed by a court in civil proceedings. Pecuniary penalties are usually found in regulatory systems targeting commercial behaviour. Civil enforcement would appear to be more appropriate than criminal enforcement in most instances of non-compliance. Maximum pecuniary penalties would equate to \$20,000 per breach for a body corporate, and \$10,000 per breach for an individual.

While the party initiating the proceedings still has the legal burden to prove the elements of the offence, pecuniary penalties apply the civil standard of proof ("balance of probabilities"). The costs to EECA for investigating and bringing proceedings would be lower than for criminal proceedings, with a higher likelihood of success.

Questions for stakeholders

- 4.2.a Do you think the penalties currently available to EECA are sufficient to deter non-compliance? Yes/No. If yes, why?
- 4.2.b Do you support the proposal to adopt the listed enforcement interventions? If not, which interventions do you not support? Why?
- 4.2.c Do you agree with the proposed maximum infringement fee? Yes/No. If not, why?
- 4.2.d Do you agree with the proposed maximum pecuniary penalties? Yes/No. If not, why?
- 4.2.e Are there any other enforcement interventions that should be considered?

Proposal 4.3

Increase the maximum penalty level so that it acts as a sufficient deterrent against non-compliance.

Currently, any breach of the regulations is a strict liability criminal offence, and the offender may be liable upon conviction for a fine of up to \$10,000 for the Product Regulations or \$5,000 for the Vehicle Regulations. These penalties have not been updated since the regulations were passed in 2002 and 2007 respectively.

Given the lack of product testing facilities in New Zealand, most manufacturers are required to use an overseas testing provider. Depending on the product, this could cost several thousand dollars, in addition to delaying the product's entry to the market. Given this cost, the current sanction against non-compliance does not appear to be large enough to create a sufficient deterrent. Businesses may prefer to risk a penalty for non-compliance than pay for overseas testing.

Market surveillance revealed 30% of vehicles displayed in car yards were not compliant with the Vehicle Regulations. Additionally, EECA’s check-testing programme found systemic non-compliance in the hot water cylinder industry.

We propose introducing a maximum fine of \$100,000 for a body corporate and \$50,000 for an individual to act as a sufficient deterrent in excess of overseas testing costs.

Questions for stakeholders

- 4.3.a Is the current maximum fine appropriate? Yes/No. If yes, why?
- 4.3.b What would be appropriate maximum fines to act as a sufficient deterrent?
- 4.3.c Could you comment on the appropriateness of a maximum fine of \$100,000 for a body corporate and \$50,000 for an individual?

Proposal 4.4

Clarify that a monetary penalty can be imposed for each breach.

Additionally, the wording used in the regulations is ambiguous and it is unclear whether the penalty provision allows a monetary penalty to be imposed for each regulated item that does not meet the requirements or per registration. Clarifying that a monetary penalty can be imposed for each individual non-compliant item founded on the same facts would aid enforcement activities, as it would provide certainty to industry and EECA around the potential liability of an offender.

Questions for stakeholders

- 4.4 Do you support clarifying that a monetary penalty can be imposed for each non-compliant item? Yes/No. If yes, why?

Table 4: Part 4 impact assessment

| Proposal | Impact on energy and emissions savings | Costs to consumers and/or government | Resilient to market changes, variation | Fair, consistent regulatory design |
|-------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Business as usual | Non-compliance means significant energy and emissions savings are not captured. | Prosecutions are EECA’s primary means to manage instances of non-compliance, but can have a high cost for government. | Due to limited enforcement tools, EECA cannot respond to changing market contexts and products. EECA has limited means to gather evidence of non-compliance in a fast evolving market. | EECA has limited monitoring, inspection and investigation activities. Limited enforcement tools and a one-size-fits-all approach is not appropriate for every level of non-compliance. Lack of clarity of repercussions does not help to deter non-compliance. |

| | | | | |
|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>4.1 The Act is amended to enhance EECA's monitoring, inspection and investigation activities.</p> | <p>Enhanced compliance would lead to more significant energy and emissions savings.</p> | <p>Proportionate options for suspected non-compliance would reduce overall cost to government and enhance regime efficacy.</p> <p>The proposals offers cost-effective options for investigating non-compliance.</p> | <p>EECA is enabled to understand market changes and more easily identify emerging instances of non-compliance.</p> | <p>Clarity and certainty of repercussions for breaching the regulations.</p> <p>Enhanced monitoring, inspection and investigation powers would encourage compliance.</p> |
| <p>4.2 Adopt a graduated set of enforcement interventions</p> | <p>Enhanced compliance would lead to more significant energy and emissions savings.</p> | <p>Cost-effective responses to non-compliance and proportionate enforcement options available to address non-compliance.</p> | <p>Offers appropriate responses to different market contexts and products/ services.</p> | <p>Clarity and certainty of repercussions for breaching the regulations.</p> |
| <p>4.3 The maximum penalty level be increased so that it acts as a sufficient deterrent against non-compliance.</p> | <p>Enhanced compliance would lead to more significant energy and emissions savings.</p> | <p>Proportionate enforcement options available to address severe non-compliance.</p> <p>A higher penalty level is preferable to an expensive prosecution.</p> | | <p>Clarity and certainty of repercussions for breaching the regulations.</p> <p>A higher penalty level would encourage compliance.</p> |
| <p>4.4 Clarify that a monetary penalty can be imposed for each breach.</p> | <p>Enhanced compliance would lead to more significant energy and emissions savings.</p> | <p>Proportionate enforcement options available to address severe non-compliance would reduce overall cost to government and enhance regime efficacy.</p> | <p>If the penalty is applied for each breach, it responds to breaches occurring in an evolving and changing market context.</p> | <p>Clarity and certainty of repercussions for breaching the regulations.</p> |

Part 5:

Delivering good and fair process

It can be difficult and costly for businesses to comply with the requirements of the regulations. The proposals outlined above would expand the scope of the regulations and delegate more powers and responsibility to EECA. To ensure the same quality of regulation is delivered, the proposals of this section set out the responsibilities of regulated parties. Additionally, EECA would provide opportunities for those affected by decisions to be heard, and opportunities for review or appeal.

While EECA is already covered by existing accountability mechanisms in the Crown Entities Act 2004, these proposals would ensure EECA has the tools and powers to fulfil its role while maintaining the confidence of industry and consumers.

We seek your feedback on four proposed changes

| | |
|-----|-----------------------------------------------------------------------------------------------------|
| 5.1 | Specify the lead-in time for new or revised standards to come into force. |
| 5.2 | Outline the requirements importers and New Zealand manufacturers need to meet to register products. |
| 5.3 | Outline the check testing policy in guidance material to be referenced in the regulations. |
| 5.4 | Include a process of internal review and a right of appeal in The Act. |

These proposals are outlined in detail below.

Proposal 5.1

Specify the lead-in time for new or revised standards to come into force.

Any new or revised standard comes into force on the 28th day after the date of its notification in the Gazette. While this ensures standards are publicly available before they take effect, the limited four-week commencement period does not provide enough time for industry to prepare for the changes.

In Australia, the GEMS Act includes a default 12 months for implementation of the regulations contained in Determinations. However, it also provides the flexibility for a new Determination to specify the day the regulations will come into force and to date the implementation date has been specified in the Determinations for all new and revised regulations. In the majority of cases, the implementation period has been less than the default, with industry agreement. We propose a similar arrangement, with a default 12-month lead-in time prescribed in the regulations, which can be superseded if a different timeframe is specified in the amending regulation.

Questions for stakeholders

- 5.1.a** Would you prefer a minimum lead-in time or fixed lead-time? Why?
- 5.1.b** In general, how long would you prefer before new and/or revised regulations to come into force following a notification in the Gazette? Why?

Proposal 5.2

Outline the requirements importers and New Zealand manufacturers need to meet to register products.

When the regulatory system was developed, it was not envisioned that EECA would administer a register or receive applications for registrations. Instead, EECA would receive and store information provided on a 'prescribed form' (along with a copy of the test report for the product). EECA would not approve applications nor endorse the way products are tested.

However, the E3 registration scheme (administered by Australia) allows traders selling regulated products in New Zealand to register those products and almost all prefer to do so. When traders go into the E3 registration system, they are asked whether they wish to register a product against the MEPS and labelling requirements in New Zealand or Australia. If they register against the New Zealand standards, the registration is referred to EECA, which assesses the information provided to see that it is complete. If any information is missing, the traders are advised and invited to resubmit the registration.

Although the way information is provided is different from the prescribed process (as traders do not submit information on the prescribed form), this practice is broadly consistent with the intent of the regulatory system. Nonetheless, it has created issues for the administration of the system, as the process does not have the same features as its Australian counterpart.

Introducing a single, joint registration system across Australia and New Zealand could resolve these concerns. It is noted, however, that the GEMS Act enables the regulator to deregister a product for a variety of reasons, not just that the product was found to be non-compliant through check-testing. In addition, New Zealand and Australia will sometimes have slightly different MEPS requirements for some products.

Updating the system to reflect current practice would offer certainty to industry around the registration process. As applications to register products to be sold in New Zealand are already accepted, the regulatory burden on industry would not increase, and the implementation costs for EECA would be minimal.

For product registrations, we propose that

- › only New Zealand manufacturers and importers may register a product
- › two or more models in the same family of products may be registered on a single registration
- › a registration may be varied to include additional models of the same family of products
- › a registration would expire after five years unless the trader renews the registration¹⁴
- › the information that needs to accompany the registration application must include
 - the contact details of the registrant
 - the model of the regulated product
 - A complete electronic copy of the test report in English
 - the laboratory in which the product was tested
 - information about the importation, manufacture and distribution of the product.

¹⁴ This would align with the Australian system, which has a 5-year registration period.

Questions for stakeholders

- 5.2.a** Do you support the proposal to set out registration requirements in legislation? Yes/No. If not, why not?
- 5.2.b** Do you agree with the proposed requirements?
- 5.2.c** For Registrants: Do you understand your responsibilities when registering a product? If not, what is unclear?
- 5.2.d** How long should a registration last before it expires?

Proposal 5.3

Outline the check testing policy in guidance material to be referenced in the regulations.

EECA use a check testing process to determine whether regulated products meet the relevant MEPS and labelling requirements. Currently, if a person wants to find information regarding the check testing process they are referred to the Australian check testing policy on the [Australian Energy Rating website](#).

The check testing process can be broadly defined by two stages:

1. A single product is tested to check it meets the relevant MEPS or labelling requirements. If the product meets the standards, no further action is taken. If it does not, the dealer will be notified and supplied with the results of the check test.
2. If the dealer considers the check test results do not accurately reflect the model's performance (i.e. for bespoke products or products the dealer considers difficult to test), they may arrange for Stage 2 check testing at their expense. EECA will advise them of how products are to be selected, how many need to be tested and where the testing is to take place. If the test results show the product meets the standards, then the model passes. The dealer is notified, and no further action is taken. If the test results reveal the product does not meet the standards, then the registration will be cancelled, and the dealer advised to remove the product from the market.

Section 36(1)(d) of The Act provides that one of the purposes for which regulations under The Act may be made is prescribing, for the purposes of paragraphs 36(1)(a)-(c), the form and manner of testing or verifying the energy performance of energy-using products and services, including vehicles. While prescribing the process in the regulations would ensure individuals and businesses are aware of their responsibilities, making subsequent changes to the check testing process would be time-consuming and difficult.

To ensure manufacturers and importers are aware of their responsibilities and ensure that appropriate changes can be made in a timely way, we propose referencing, in regulations, guidance material approved by EECA's Chief Executive. The guidance material would be based on the Australian policy linked above.

Questions for stakeholders

- 5.3.a** Do you support the regulations referencing guidance material that outlines the check testing process? Yes/No. If not, why?
- 5.3.b** Are there any parts of the current check testing process that could be improved? If so, what are they?
- 5.3.c** For Suppliers: Do you understand your responsibilities when a product fails? If not, what parts are unclear?
- 5.3.d** Have you experienced difficulty testing bespoke products? Yes/No. If yes, what were they?
- 5.3.e** For bespoke or difficult-to-test products, what alternative approach to testing would best fit?
- 5.3.f** What is your estimated cost incurred for re-testing? Please include any relevant information on how you calculated your estimate.

Proposal 5.4

Include a process of internal review and a right of appeal in The Act.

Currently, EECA's compliance and enforcement policies are outlined in documents approved by the EECA Board. These policies set out the functions delegated to compliance officers and how they should be performed. Given the proposals in this document to expand EECA's compliance and enforcement interventions, it is important that the procedure for reviewing regulatory decisions is transparent and publicly available.

We propose to include a process of internal review in The Act. Internal reviews are an effective way of identifying and correcting minor mistakes without the cost of an appeal or judicial review. The internal review would be commissioned by the Chief Executive after receiving a complaint. We also propose to include the right to appeal regulatory decisions after an internal review is conducted (i.e. appeal the outcome of a review). An appeal of a regulatory decision would be heard by the District Court, whose appeal procedures are outlined in the District Court Rules.¹⁵

The internal review and appeal procedures would contain adequate safeguards to protect an individual's rights and interests and be consistent with the right to natural justice affirmed by section 27(1) of the New Zealand Bill of Rights Act 1990.

Questions for stakeholders

- 5.4.a** Do you support including an internal review process in The Act? Yes/No. If not, why not?
- 5.4.b** Do you support including the right to appeal regulatory decisions? Yes/No. If not, why not?
- 5.4.c** Would including the right to appeal regulatory decisions have unintended consequences? If so, what might these unintended consequences be?

¹⁵ [District Court Rules 2014](#)

Table 5: Part 5 impact assessment

| Proposal | Impact on energy and emissions savings | Costs to consumers and/or government | Resilient to market changes, variation | Fair, consistent regulatory design |
|----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Business as usual | <p>Timing for impact on energy and emissions savings unknown.</p> <p>Inconsistencies in check-testing policy may miss instances of non-compliance and fail to capture energy and emissions savings opportunities.</p> | <p>Uncertainty in current system can unnecessarily increase costs of compliance for regulated parties.</p> <p>Regulated parties manage costs resulting from ambiguities in current system.</p> | | <p>Regulated parties find the system difficult to engage with.</p> <p>Lead-in time determined by Cabinet decision-making process and can be unpredictable for regulated parties.</p> <p>Regulated parties do not have a simple means to seek a review of the EECA Board's compliance and enforcement decisions.</p> |
| 5.1 Specify the lead-in time for new or revised standards to come into force. | <p>Timing for impact on energy and emissions savings known in advance.</p> | <p>Manages the costs and burden of regulations for manufacturers and industry.</p> <p>Reduces the business costs of transitioning between new and updated requirements.</p> | <p>Allows flexibility for lead-in time for unique circumstances.</p> | <p>Clarity and certainty around the enforcement of the regulations.</p> <p>Provides predictability for industry.</p> <p>Option for stakeholder participation in deciding lead-in times.</p> |
| 5.2 Outline the requirements importers and New Zealand manufacturers need to meet to register products. | | <p>Builds trust with manufacturers and importers and increases the likelihood of compliance.</p> | | <p>Clarity and certainty around registration requirements.</p> |

| | | | | |
|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5.3 Outline the check testing policy in guidance material to be referenced in the regulations.</p> | <p>More consistent application of check-testing policy ensures non-compliant products do not slip through and emissions and energy savings are captured.</p> | <p>Reduces cost of compliance for industry and increases accessibility to check-testing policy in guidance material.</p> | <p>Ensures manufactures and importers produce more energy efficient products that comply with the check-testing policy.</p> | <p>Clarity and certainty around the enforcement of the regulations. Makes it easier for industry to engage with the system and comply.</p> |
| <p>5.4 Include a process of internal review and a right of appeal in The Act.</p> | | <p>Rebalances the burden of regulations for manufacturers and industry. Builds trust with manufacturers and importers and increases the likelihood of compliance.</p> | <p>An official avenue for businesses or consumers to voice their concerns.</p> | <p>Reinforces fair and impartial decision-making.</p> |

