



## COVERSHEET

<b>Minister</b>	Hon Megan Woods	<b>Portfolio</b>	Energy and Resources
<b>Title of Cabinet paper</b>	Updating the Energy Efficiency Regulatory System – Release of Discussion Document	<b>Date to be published</b>	22 July 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2021	Updating the Energy Efficiency Regulatory System – Release of Discussion Document	Office of the Minister of Energy and Resources
9 June 2021	Cabinet minute DEV-21-MIN-0130	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

[Budget sensitive]

Office of the Minister of Energy and Resources

The Chair, Cabinet Economic Development Committee

## **Updating Energy Efficiency Regulatory System for Products and Services: Agreement to Consult**

### **Proposal**

- 1 This paper seeks Cabinet agreement to release a public consultation document on proposals to enhance the energy efficiency regulatory system for products and services, and support the achievement of New Zealand's future energy efficiency and emissions reduction goals.

### **Relation to government priorities**

- 2 If implemented, the proposals for consultation could contribute to two of the Government's 12 priority outcomes, namely: to transition to a clean, green and carbon neutral New Zealand, and ensure everyone has a warm, dry home.
- 3 Enhancements to the energy efficiency regulatory system for products and services will also be part of the Heat, Industry and Power sector chapter of the Government's Emissions Reduction Plan.

### **Executive Summary**

- 4 The Energy Efficiency and Conservation Act (the Act) 2000 provides the legal basis for promoting energy efficiency, energy conservation, and the use of renewable energy in New Zealand.
- 5 The Act enables the making and amending of Energy Efficiency (Energy Using Products) Regulations 2002 (the Product Regulations) , which regulate energy-using products through prescribing minimum energy performance standards (MEPS) and labelling requirements that apply to manufacturers and importers.
- 6 The Act also enables the making and amending of Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 (the Vehicle Regulations) that create a national system for regulating the energy efficiency of vehicles sold in New Zealand. It is mandatory for light vehicles to display Vehicle Fuel Economy Labels (VFEL) when offered for sale by a registered motor vehicle trader.
- 7 The MEPS and labelling requirements under the Product Regulations underpin New Zealand's participation in the Trans-Tasman Equipment Energy Efficiency (E3) Programme with Australia, which facilitates trade by aligning MEPS and energy-rating label requirements for energy-using products.
- 8 The Energy Efficiency and Conservation Authority (EECA) monitors and enforces compliance with these requirements, and develops and consults on proposed new requirements.

## BUDGET SENSITIVE

- 9 In 2019, a Review of the Product Regulations was initiated by EECA and completed by Allen + Clarke (a policy consultancy firm) to ensure the Product Regulations and their legal-making power (section 36 of the Act) are clear, accessible, fit-for-purpose, and can continue supporting New Zealand's future energy efficiency and conservation, and emissions reduction goals.
- 10 The Review found there are opportunities to improve the effectiveness of the regulatory system so that it can keep pace with market and technological changes, and better align with Australia's equivalent regulatory regime and international best practice.
- 11 I seek Cabinet's agreement to publicly consult on a number of proposals that respond to the issues highlighted by the Review. These proposals are set out in the attached discussion paper *Energy efficiency products and services – A regulatory reform discussion document*.
- 12 I intend to have a minimum six week period of public consultation pending your approval to release the discussion document. Following consultation, I expect to report back with final proposals for Ministers' consideration before the end of 2021.

### Background

- 13 The Energy Efficiency and Conservation Act (the Act) 2000 enables the making and amending of Energy Efficiency (Energy Using Products) Regulations 2002 (the Product Regulations). The Product Regulations prescribe minimum energy performance standards (MEPS) and labelling requirements for energy-using products that are designed to address different barriers to increase energy efficiency for New Zealand consumers:
  - 13.1 MEPS require products to meet specified minimum energy performance criteria when tested under standardised conditions.
  - 13.2 Labelling requirements help consumers make informed purchase decisions by providing easy and accessible information about the energy performance and life-time operating costs of the product.
- 14 The requirements also underpin New Zealand's participation in the Trans-Tasman Equipment Energy Efficiency (E3) Programme with Australia, which facilitates trade by aligning MEPS and energy-rating label requirements for energy-using products. We need to maintain broad alignment with Australia to avoid breaching our non-treaty obligations under the Trans-Tasman Mutual Recognition Agreement (TTMRA).
- 15 MEPS and labelling requirements constitute the Energy Efficiency and Conservation Authority's (EECA) most successful energy efficiency programme to date. The 86 million regulated products sold in New Zealand since 2002 have delivered 59.55 petajoules (PJ) in energy savings, which is equivalent to the annual electricity generation of roughly 20 new wind farms<sup>1</sup> avoided 2.33 million tonnes of greenhouse gas emissions and accrued \$1.45 billion in national monetary savings due to avoided electricity costs.

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<sup>1</sup> 59.55PJs converted to 16542GWh divided by 840GWh, which is the anticipated generation from Mercury Energy's new Turitea wind farm – New Zealand's largest wind farm to date.

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- 16 MEPS and/or labelling requirements currently apply to a range of household and commercial products and appliances, including air conditioners/heat pumps, dishwashers, refrigerators and televisions.
- 17 The Act also enables the making and amending of Energy Efficiency (Vehicle Fuel Economy Labelling) Regulations 2007 (the Vehicle Regulations) that create a national system for regulating the energy efficiency of vehicles sold in New Zealand. It is mandatory for light vehicles to display Vehicle Fuel Economy Labels (VFEL) when offered for sale by a registered motor vehicle trader.
- 18 Cabinet agreed, on 26 January 2021, 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 CO<sub>2</sub>/km 2025 target being phased in through annual targets that get progressively lower to give importers time to adjust.
- 19 Cabinet subsequently agreed, on 19 April 2021, to a Clean Car Discount to provide for consumers to receive a discount on the first purchase of zero- and low-emission vehicles (such as electric cars), or to pay a fee on the first purchase of high-emission vehicles (such as large petrol powered SUVs) **[budget sensitive]**.
- 20 To support the roll-out of the Clean Car Import Standard and Clean Car Discount, vehicle fuel labelling information in the Vehicle Regulations will need to be transitioned to include emissions and related pricing information **[budget sensitive]**.
- 21 While the Act empowers vehicle-labelling regulations, in order to incorporate emissions and/or rebate/fee information on the label, the regulation-making power in the Act would need to be broadened beyond energy performance to include emissions. This is one of the proposals included in the discussion paper attached.

### **Strategic drivers for the energy efficiency regulatory system review**

- 22 In 2019, a Review of the Product Regulations was initiated by EECA and completed by Allen + Clarke (a policy consultancy firm) to ensure the Product Regulations and their legal-making power (section 36 of the Act) are clear, accessible, fit-for-purpose, and can continue supporting New Zealand's future energy efficiency and conservation, and emissions reduction goals.
- 23 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.
- 24 The Review found that despite the achievements of the Product Regulations to date, EECA experiences operational constraints and some divergent regulatory practices compared to Australia, which creates issues for our ongoing cooperation under the E3 Programme.
- 25 The Review also found room for improvement to ensure the Product Regulations keep pace with market and technological innovations for energy-using products to avoid New Zealand becoming a dumping ground for poor performing products.

- 26 The Product Regulations have not been reviewed before, whereas Australia has a mandatory periodical review of their equivalent legislation<sup>2</sup>, the Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act) – which they have now completed and released to the public.<sup>3</sup> It is important that we maintain broad alignment with Australia to avoid breaching our non-treaty obligations under the TTMRA.

### Overview of key Review findings and proposals to address them

- 27 The Review findings and proposals to address them have been informed by research on international energy-using product regulations, comparisons with similar domestic regulatory frameworks for other products, and engagement with key stakeholders. This included EECA, industry and government stakeholders, and the Australian government.
- 28 Key issues highlighted by the Review include: unnecessary burden on Cabinet decision-making; inflexible to market movement and innovation; misaligned with Australian system; limited access to information; limited market coverage; limited investigative powers and limited enforcement tools.
- 29 The Review finds there are a range of areas that could be immediately improved to address these issues and enhance the overall effectiveness of the Product Regulations. Key areas to improve the energy efficiency regulatory system include:
- 29.1 improving the coverage of the requirements;
  - 29.2 streamlining the decision-making process for amending and improving regulations to respond to market innovation;
  - 29.3 simplifying the system for EECA to administer;
  - 29.4 adopting effective monitoring and investigation powers;
  - 29.5 broadening the range of appropriate enforcement measures available under the regime and;
  - 29.6 aligning the requirements with Australia.
- 30 Improving the effectiveness and coverage of the requirements will have a range of benefits, including:
- 30.1 improved energy efficiency and the end-use of our renewable electricity supply;
  - 30.2 enhanced operational energy use in buildings (residential and commercial);
  - 30.3 reduced overall energy costs;
  - 30.4 greater emissions reductions and;
  - 30.5 better alignment with Australia under the E3 products programme.

<sup>2</sup> Section 176 of the GEMS Act 2012.

<sup>3</sup> <https://www.energy.gov.au/government-priorities/energy-productivity-and-energy-efficiency/gems-act-review>

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- 31 These benefits would contribute to two of the Government’s 12 priority outcomes, namely: to transition to a clean, green and carbon neutral New Zealand, and ensure everyone has a warm, dry home.
- 32 A proposal within the discussion document also supports the roll-out of the Clean Car Import Standard and Clean Car Discount, by transitioning vehicle fuel labelling information in the Vehicle Regulations to include emissions and related pricing information **[budget sensitive]**.
- 33 Enhancements to the energy efficiency regulatory system for products and services will also be part of the Heat, Industry and Power sector chapter of the Government’s Emissions Reduction Plan.
- 34 To address the issues raised in the Review, I propose to consult with the public and industry on a number of proposals to improve the energy efficiency regulatory system. These are set out as follows in the discussion document attached:

34.1 *PART 1: Future-proofing the System* aims to expand the coverage of the requirements to reflect product innovation and streamline the decision-making process for amending and improving regulations to respond to product and market changes, and expands the role EECA currently plays in managing emissions abatement, with the following proposals:

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

34.2 *PART 2: Consistent and Fair Regulation* also expands the coverage of the regulations to reflect the evolving ways that goods can be bought or sold in the market, and proposes to regularly review the energy efficiency regime so that it does not lag behind our trade partners nor risks New Zealand becoming a dumping ground for poor performing products, with the following proposals:

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

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34.3 PART 3: *Improving System Administration* aims to make the system easier for EECA and agents acting on its behalf to administer, as well as rebalancing the costs of administering the system to make it more fair for the regulator and regulated parties, with the following proposals:

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

34.4 PART 4: *Ensuring Effective Compliance* looks to expand EECA’s monitoring, inspection and investigation powers that are currently limited and enforcement measures that are not proportionate, in order to improve compliance outcomes and the effectiveness of the regulatory regime, with the following proposals:

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

34.5 PART 5: *Delivering Good and Fair Process* clarifies responsibilities for regulated parties and provides greater predictability regarding new or updated requirements, making it easier to comply, and providing a process for those affected by regulatory decisions to be heard, with the following proposals:

<b>5.1</b>	Specify the lead-in time for new or revised standards to come into force.
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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.

35 Further detail on each of the proposals can be found in the attached discussion document.

### Next steps

36 Subject to Cabinet agreement to release the discussion document, I intend to have a six week period of consultation starting in mid-2021. Following consultation, I expect to report back to Cabinet with policy proposals by the end of 2021.

### International obligations

37 New Zealand participates in the Trans-Tasman Equipment Energy Efficiency (E3) Programme with Australia, which facilitates trade by aligning MEPS and energy-rating label requirements for energy-using products. We need to maintain broad alignment with Australia to avoid breaching our non-treaty obligations under the Trans-Tasman Mutual Recognition Agreement (TTMRA).

### Financial implications

38 There are no financial implications associated with releasing the discussion paper for public consultation.

### Legislative implications

39 There are no legislative implications associated with releasing the discussion paper for public consultation.

### Regulatory Impact Analysis

40 The discussion document substitutes for a Regulatory Impact Assessment. The Regulatory Quality Team (RQT) at the Treasury reviewed the discussion document titled *Energy efficiency products and services – a regulatory reform discussion document*. The RQT confirmed that the discussion document is likely to lead to effective consultation and support the delivery of it in place of the Regulatory Impact Analysis to support subsequent decisions.

41 The Regulatory Impact Assessment Review Panel at the Ministry of Business, Innovation and Employment confirmed that changes made to the discussion document, following the Treasury's RQT review, were not material, further review was not required and the final version of the discussion document substitutes for a Regulatory Impact Assessment.

### Climate Impacts of Policy Assessment



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- 42 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply at the consultation stage. The Ministry for the Environment will work with MBIE to assess the emissions impacts of policy proposals as they are advanced – as appropriate – at a later date.

### Population implications

- 43 The proposal to release the discussion paper for public consultation does not have an impact on specific population groups.

### Human Rights

- 44 The proposal is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### Consultation

- 45 The following agencies were consulted in the development of this paper: Energy Efficiency and Conservation Authority; Ministry of Justice; Ministry for the Environment; Ministry of Foreign Affairs and Trade; Ministry for Business, Innovation and Employment; the Treasury; Commerce Commission; WorkSafe; Standards NZ; Electricity Authority; New Zealand Customs Service; Ministry of Transport. Te Puni Kōkiri has been informed.

### Communications

- 46 MBIE will issue a media statement inviting the public to make submissions following the release of the discussion paper. This will be supported by further information on the MBIE and EECA websites and other communication channels, which will be finalised in due course.

### Proactive Release

- 47 I propose to release a copy of this paper at the same time as the discussion document attached with any redactions I consider appropriate under the Official Information Act 1982.

### Recommendations

The Minister of Energy and Resources recommends that the Committee:

- 1 **note** the 2019 Review of the energy efficiency regulatory system found there are opportunities to improve the effectiveness of the system to enable it to keep pace with market and technological changes, and better align with Australia's equivalent regulatory regime and international best practice.
- 2 **note** that the energy efficiency regulatory reform work programme will be part of the Heat, Industry and Power sector chapter of the Government's Emissions Reduction Plan.
- 3 **agree** to the release of the attached public consultation document titled *Energy efficient products and services - A regulatory reform discussion document*.

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- 4     **agree** that that the public consultation period is intended to commence in mid-2021 and run for at least six weeks.
  
- 5     **invite** the Minister of Energy and Resources to report back to the Cabinet Environment, Energy and Climate Committee on the outcome of the consultation and on policy proposals for the energy efficiency regulatory system for products and services in 2021.
  
- 6     **agree** to this Cabinet Economic Development Committee paper being proactively released at the time the attached discussion document is released.

Authorised for lodgement

Hon Dr Megan Woods

**Minister of Energy and Resources**