



Australian Government
**Department of Climate Change
and Energy Efficiency**

Senator the Hon Doug Cameron
Chair
Senate Environment and Communications Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Cameron,

I would like to thank the Senate Environment and Communications Legislation Committee for the Committee's inquiry into the Greenhouse and Energy Minimum Standards Bill 2012 and the Greenhouse and Energy Minimum Standards Bill (Registration Fees) 2012. The Committee requested a response from the Department of Climate Change and Energy Efficiency on two issues relating to the Greenhouse and Energy Minimum Standards (GEMS) legislation, raised by Lighting Council Australia.

I am pleased to present the Department's response to the questions raised by Lighting Council Australia, detailed in Attachment A.

I trust this information will address the Committee's questions.

Yours sincerely

Mel Slade
A/g Assistant Secretary
Appliance Energy Efficiency Branch

Question:

In its submission to the inquiry, the Lighting Council of Australia argued that the criminal sanctions for breaches of the minimum energy performance standards and labelling regime are '...disproportionate to the nature of offences'.¹ The Lighting Council also stated that '...little attempt has been given in the consultation process to explain how criminal sanctions may apply'.²

What is the department's response to these concerns raised by the Lighting Council of Australia?

Response:

The range of enforcement mechanisms in the Greenhouse and Energy Minimum Standards Bill 2012 ensures the Australian Greenhouse and Energy Minimum Standards (GEMS) Regulator can adopt a response to contraventions of energy efficiency laws that is proportionate to the circumstances. Lesser remedies to contravention, such as administrative action or infringement notices, allow an appropriate response to minor contraventions of the law. More serious remedies like potential criminal penalties, in the form of fines rather than imprisonment, ensures a deterrence and response to more serious contraventions.

A proportionate approach to contravention is important because the impact of contravention will be proportionate to the circumstances. Contraventions relating to products with low energy intensity are likely to have a comparatively lower impact while products with high energy intensity, or supplied in large quantities, may have a higher negative impact. Deterrence is also important given it often will be unfeasible to recall non-compliant products once they are supplied to end users, with potentially long-lasting effects on energy consumption and greenhouse gas emissions because.

The Department of Climate Change and Energy Efficiency announced the intended proportionate approach to enforcement during consultation on the GEMS legislation.

In August 2011, the Department of Climate Change and Energy Efficiency released the draft Greenhouse and Energy Minimum Standards Bill for consultation and comment by interested stakeholders. The consultation process attracted approximately 100 attendees to discussion forums in Sydney and Melbourne and approximately 20 written submissions.

In September 2011, the Department publicly released a paper responding to the issues raised during consultation. In response to the concern that criminal sanctions could be applied to relatively minor infringements, this paper states:

An enforcement policy is being drafted to guide the application of the various possible sanctions for contraventions of the Act. This policy is expected to follow existing enforcement policies issued by regulatory agencies, which reserve the most serious remedies for the most serious breaches.

¹ Lighting Council of Australia, *Submission 2*, p. 1.

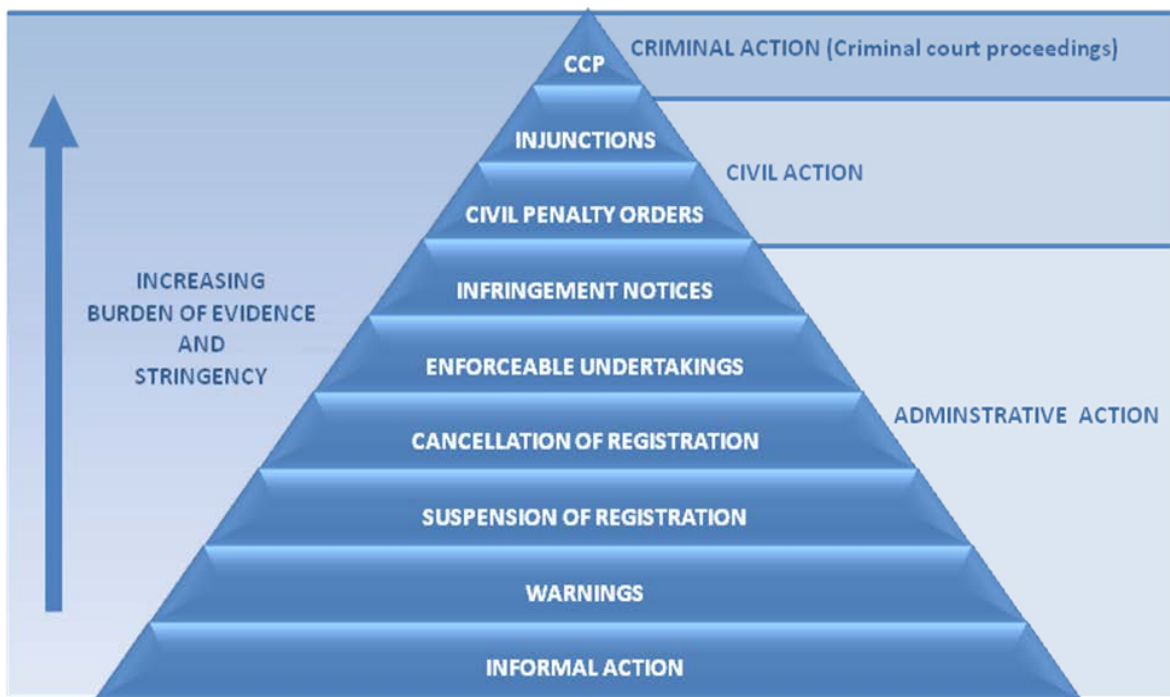
² Lighting Council of Australia, *Submission 2*, p. 1.

Criminal penalties, which are limited to fines rather than imprisonment, will be retained as a potential remedy as they provide an effective deterrence and sanction for serious contraventions of the Act by bodies corporate and individuals.

The GEMS Enforcement Policy is nearing completion and the following excerpt makes it clear that enforcement action will take a proportionate approach:

The GEMS Act, and DCCEE's wider policy approach, provides the GEMS Regulator with a number of administrative, civil and criminal responses to contraventions of the GEMS Act. These offer a hierarchy of options that can be used to respond proportionately to contraventions, based on the particular circumstances of the case. Guidance on how to decide which option, or combination of options, to use is given in Section 8.4 and the hierarchy of GEMS enforcement options is illustrated in Figure 1.

Figure 1 GEMS enforcement pyramid



Question:

The Lighting Council of Australia objected to the requirement that industry provide the government with sales and import data stating that they '...have no confidence that sensitive private commercial data will not be kept confidential'.³

How does the department respond?**Response:**

Section 56 of the Greenhouse and Energy Minimum Standards Act 2012 permits the Australian GEMS Regulator to request data about the number of regulated products imported, manufactured, sold or exported by a business. The power to request data has been included because the data will assist to:

- i. identify which areas of the market are progressing toward greater efficiency without intervention and those areas in which intervention may be required to drive greater efficiency
- ii. inform consideration of any extension/reduction of the statutory notice period before commencement of GEMS determinations
- iii. assess stockpiling risks
- iv. evaluate the effectiveness of existing regulations, and the accuracy of past projections of energy use and savings, and
- v. target compliance checks to product areas and industry sectors with the heaviest traffic.

The primary reasons for obtaining this data are, in all cases, for the improvement and administration of Australia's energy efficiency program.

The Australian Government will institute legal and administrative safeguards to prevent improper disclosure of information obtained under the Act. These safeguards will apply to all potentially sensitive information obtained under the Act, not only sales and import data obtained under section 56.

The statutory protections for commercially-sensitive information include section 169, which makes unauthorised disclosure of information a criminal offence, and section 171, which prohibits commercially-sensitive information being disclosed in court or tribunal proceedings.

With regard to specific concern about sharing data with overseas government authorities, section 170(1)(a)(iii) authorises sharing of information obtained under the Act with domestic or foreign authorities only where the information is directly relevant to administering or enforcing energy efficiency laws. This would authorise the sharing of check test reports indicating that products fail to meet legal efficiency standards, which is the primary policy intention behind section 170(1)(a)(iii). It is not clear how commercially-sensitive data about sales in Australia would be relevant to administering or enforcing foreign energy efficiency laws.

³ Lighting Council of Australia, *Submission 2*, p. 2.

The legal safeguards in the GEMS legislation will be supported by an information handling policy, which will be released by the Australian GEMS Regulator. This policy will govern the treatment of all potentially sensitive information obtained under the Act but will pay particular attention to the protection and use of data obtained under section 56.

The policy will set out guidelines for sharing information with government agencies, researchers or other parties. One such guideline is that data should be aggregated to a level at which it ceases to be commercially-sensitive, wherever possible. The existence of publicly available sales data, such as that supplied in Australia and around the world by the Gfk Group and that published online by New Zealand, indicates that aggregated sales data can be developed and shared without prejudicing commercial interests. As the Australian data reporting framework is developed, particular attention will be given to the lessons learned in the equivalent data reporting framework established in New Zealand

Any potential sharing of commercially-sensitive information, whether it is sales data, check test reports or other information obtained under the Act, will be assessed on a case-by-case basis and the potential business impact of sharing information will be an important factor in any decision. The Department of Climate Change and Energy Efficiency considers these legal and administrative safeguards will ensure that information obtained to promote an effective energy efficiency program will be protected from improper disclosure.