



AUSTRALIAN INDUSTRY
GROUP

Ai Group Submission

in response to the

Supplementary Discussion Paper

on

Compliance Obligations and Enforcement Measures

for the

*Proposed National Legislation for
Minimum Energy Performance Standards (MEPS) and Energy Labelling*

August 2010

EXECUTIVE SUMMARY

The Australian Industry Group (Ai Group) welcomes the opportunity to comment on the *Supplementary Discussion Paper on Compliance Obligations and Enforcement Measures for the Proposed National Legislation for Minimum Energy Performance Standards (MEPS) and Energy Labelling*, hereafter referred to as the *Supplementary Discussion Paper*.

Ai Group's response to the *Supplementary Discussion Paper* builds on our earlier response to the Consultation RIS in March 2010 as well as the Discussion Paper on Proposed National Legislation for MEPS and Energy Labelling in September 2009 and is based on substantial consultation with industry through Ai Group's networks.

Ai Group welcomes the consultation with stakeholders through the *Supplementary Discussion Paper* and is broadly supportive of the proposed move to nationally consistent and efficient regulation of minimum energy performance standards (MEPS) compliance obligations and enforcement measures.

It is essential that outcomes from a move to national legislation benefit all stakeholders: industry, community, environment and government.

Importantly, Ai Group supports the objectives of national legislation to provide a vehicle for expanding the MEPS and energy labelling program to improve the energy efficiency of appliances and equipment only where this is proven to be the most appropriate and cost-effective effective means of addressing market failure.

Ai Group supports:

- a basic agreement that would allow the Australian Customs Service (ACS) to provide the MEPS Regulator with only the names of equipment suppliers;
- legislation to capture non-MEPS compliant motors attached to third party mechanical equipment;
- adequate resources for the MEPS regulator;
- the expansion of offences to cover actions by retailers or other members of the public;
- limiting the "public display" period of grandfathered products;
- mandatory NATA testing where suppliers fail three screen tests in any 24 month period;
- investigation into the alignment of MEPS, WELS and the electrical safety regulatory schemes;
- a sliding scale of penalties;
- the modification of the current enforcement system toward a more streamlined process;
- adverse publicity for non-compliant suppliers;
- the adoption of the "Reach for the Stars" program as used in West Australia.

Ai Group does not support:

- detailed data collection from suppliers;
- a reduction of the grandfather period to 12 months;
- categorising products as “high risk”;
- the adoption of large increases in penalty rates.

RESPONSE TO THE SUPPLEMENTARY DISCUSSION PAPER

1. Registration at import and domestic manufacture

Ai Group supports a basic agreement between the Australian Customs Service (ACS) and the MEPS regulator. The basic agreement should allow the ACS to provide the MEPS Regulator with only the names of the equipment suppliers. The MEPS Regulator could then directly inform all suppliers of their legal responsibilities in regard to the importation of the relevant equipment and also use the supplier information to target enforcement actions including check testing.

At the moment, compliance monitoring seems to be weighted heavily toward manufacturers and suppliers of registered product. In contrast, there does not seem to be much attention given or processes in place to monitor the importation of non-registered product. Ai Group would argue that the arrangement detailed above will facilitate increased awareness of the MEPS requirements by all suppliers and also provide the MEPS Regulator with the supplier information needed for enforcement actions.

Ai Group would further argue that model-specific data should only be provided by the ACS to the MEPS Regulator if the MEPS Regulator is enforcing compliance measures on a supplier and a dispute arises regarding the number of products imported. A separate arrangement should allow the MEPS Regulator to obtain individual model-specific data from the ACS in this case only. If the supplier does not provide accurate information about the number of products imported then the supplier should be responsible for the costs of the ACS providing the information to the MEPS Regulator.

Ai Group also has significant concerns regarding non MEPS compliant motors being imported into Australia attached to third party mechanical equipment (gearboxes, electric fans, conveyor systems, pumps, etc). These motors are imported by or supplied to various points of the supply chain including end user companies, Original Equipment Manufacturers (OEMs) and Equipment Procurement and Construction (EPC) contractors responsible for the design and construction of new plant.

Ai Group highlights this issue for the attention of legislative drafters so provisions of new legislation can be included to address this issue. Currently, third party mechanical equipment is imported without individual motor details being provided separately from the documented larger machinery to which the

motors are attached. This deficiency of current legislation makes enforcement of MEPS requirements in relation to motors imported as part of third party mechanical equipment extremely difficult.

Another similar and parallel issue regarding importers of third party mechanical equipment may be their ignorance of MEPS requirements. Ai Group's experience is that importers are not well informed on MEPS requirements in relation to motors attached to mechanical equipment. Further, if the importers are aware of the MEPS requirements, there is evidence to suggest that the requirements can be contravened without repercussions. Ai Group believes there have been no enforcement actions taken against such importers to date. Anecdotal information suggests that MEPS compliance of motors attached to third party equipment and imported by end users, OEMs and EPC contractors may be largely lacking.

Motor suppliers, manufacturers and end user companies are reluctant to pass information to the MEPS regulator in regard to customers and contractors with whom they are doing business. Compliance and enforcement which relies on industry informing the process may not be a serious deterrent to those trying to skirt the MEPS requirements.

Ai Group proposes as a possible solution a requirement on all mechanical equipment importers to make an import declaration. This is consistent with the above proposed basic agreement between the ACS and MEPS regulator. The importer would be required to state if any MEPS scope motors are attached to their imported mechanical equipment. If the motors are to be sold or used in Australia, the importer would be required to make a declaration that the motors are MEPS compliant or, if not, will only be used for export. The declaration would need to be made by the importer of the goods who would then be responsible for ensuring conformance to legislation and the associated penalties. As part of the basic agreement, the ACS would supply the name of the mechanical equipment importer to the MEPS regulator.

Registration processing times

Specifically regarding registration processing times, item 2.2.3 of the *Supplementary Discussion Paper*, Ai Group would certainly prefer shorter processing times than are currently experienced. Also of primary importance is the correct processing of applications. This area of work is becoming increasingly complex and difficult and Ai Group is concerned that mandating a maximum processing time could impact on the quality of the work. Ai Group would argue that the MEPS Regulator must be adequately resourced with suitably qualified and trained staff to keep the registration process to acceptable time frames.

Offences

Regarding the suggested offences listed under item 2.3 of the *Supplementary Discussion Paper*, Ai Group suggests the following additional offence to those listed:

- It would be an offence to swap, damage, obscure or remove labels from appliances.

Ai Group notes that all suppliers receive requests from retailers for replacement energy labels. This indicates that labels are regularly removed from products on shop floor display. Suppliers should not be responsible for actions taken by retailers. A person who places the wrong label onto a product should be responsible for their own actions.

The addition of the above offence may cause retailers to be more careful about damaging, obscuring or removing energy labels from appliances.

2. Grandfathering period

The assumption has been presented in the *Supplementary Discussion Paper* that the current unlimited grandfathering period disadvantages both consumers and compliant firms. No justification has been supplied to substantiate this claim and Ai Group would argue that this claim is not correct.

Ai Group welcomes the move towards the introduction of long-term strategies for different product types and would like to point out the average product development time after a major change to a product standard is three years from the date of publication of the new standard. The assertion that governments will give ample advanced warning is not an adequate assurance. Unfortunately, in regard to MEPS requirements, the experience has been that governments have made political announcements that have overridden reasonable processes and time frames for suppliers. Changes to MEPS requirements have been made without the provision of adequate time for suppliers to adapt to the new regulatory requirements.

Ai Group is extremely concerned that the proposed 12 month grandfather period is grossly inadequate. Extensive experience over many products for both water and energy label changes has shown that a significant number of products will still be in the supply chain 36 months after a regulatory change. Ai Group accepts the numbers are relatively low by 36 months, but mandating that these products must not be sold benefits nobody. It will create a “black market” for these appliances or the products will have to be destroyed. Either option creates no benefit for the market and only creates a loss for suppliers. This proposal shows a lack of understanding of the retail, wholesale and industrial markets in Australia and the likely consequences of the proposed change.

Ai Group suggests a reasonable position is for products to be taken off “public display” 24 months after a change to MEPS requirements. The product should still be able to be sold legally as per the existing grandfather conditions.

3. Registration test reports and fees

The *Supplementary Discussion Paper* proposes that there may be merit in assigning particular products to a “High Risk of non-compliance” category and that “High risk” products could require a NATA accredited test report to accompany registration applications. Ai Group would argue that the criteria for defining “High Risk” would be difficult to implement equitably. This proposal would also penalise suppliers who maintain high testing standards at in-house laboratories by requiring them to outsource testing to significantly more expensive NATA laboratories.

Ai Group suggests the following alternative strategy to the *Supplementary Discussion Paper* proposal. If a supplier fails three screen tests that are unresolved in a 24 month period, then for the next 12 months all registration test reports must only be performed by an Australian NATA accredited laboratory. This would provide an incentive to suppliers to resolve screen test issues and avoid screen test failures. As further incentive, criteria should be set for test laboratories that are found to continually provide sub-standard or fraudulent test reports. Continual failures should incur a significant penalty.

While the concept of moving the cost of registration processing and screen tests from the taxpayer to the supplier is understandable, Ai Group is alarmed that registration fees could potentially increase by 1900%. Ai Group questions the efficiency of the MEPS Regulatory process and points out that full cost recovery will lead to any inefficiencies in the process being born by suppliers.

Ai Group highlights the recent review of the WELS Act. A major recommendation from that review suggests the alignment of the WELS and MEPS processes where possible. Ai Group supports this recommendation and points out that in some cases, the same test report from a supplier is sent through the two different MEPS and WELS processes. Ai Group considers that there is scope to improve the efficiency of these processes by eliminating unnecessary duplication.

Ai Group supports the Electrical Equipment Safety System (EESS) currently being proposed by the Electrical Regulatory Authorities Council (ERAC). We suggest it is a model that should be considered by the MEPS Regulator. Ai Group further asserts that investigations should be conducted into the alignment potential of MEPS, WELS and the electrical safety regulatory processes. All three may be able to live under the one administrative umbrella. Ai Group makes this suggestion as we wish to see effective enforcement at least cost.

Part of the EESS model includes greater transparency of the use of registration funds and review of the value obtained. Electrical safety regulators also have obligations to recover costs. Ai Group’s interest in this suggestion is to ensure that the MEPS regulatory process alone does not impose unnecessary burdens on suppliers. Incorporating MEPS, WELS and the ERAC EESS scheme into the one regulatory process may provide administrative efficiencies, enforcement activity coordination and transparent reviews of overall system effectiveness.

It is understood that some product categories such as electric motors may require less work for the regulator than others when being registered. A case could be made for their registration fee to be reduced in relation to the former. However, Ai Group acknowledges that establishing a family of models for these products can cause the regulator a considerable amount of work, particularly when adding variants to the family. Ai Group is concerned that agreeing to vary the registration costs may be an excuse to raise all registration fees and increase the burden on industry. Ai Group does not support the proposal in its current format and requests more detailed information on its implementation and associated impact on industry.

Ai Group also suggests that fees should not only reflect cost of administration of registration but also enforcement costs such as screen test costs attributed to individual product categories. For example a product category may have only a few registrations that are easily enforced. In such instances, registration fees for that product category should be reduced. The costs for more difficult products should not be increased. As stated above, Ai Group considers that cost savings from addressing inefficiencies in administration should be sought.

4. Penalty Rates

As a general principle, Ai Group suggests that a sliding scale of penalties is needed. The scale should reflect the value of products, the energy used by products and the potential for damage to the environment and market.

Unfortunately the enforcement regime under the current scheme, which is highly complicated and extremely difficult to enforce, is encouraging the “Opportunistic Non-Compliance” behaviour referred to in Figure 1. To counter this behaviour it may be prudent to have a sliding scale of fines for repeat offenders. These fines would then be used to fund further enforcement programs or screen tests.

Ai Group supports compensation fines to the consumer and the environment. These should be calculated by a fixed formula and not be dependent on previous offences for non compliance.

Ai Group would like to caution the MEPS Regulator against adopting large increases to penalty rates. This may seem attractive but when the penalty is large, the burden of proof may become onerous. Legal teams may become involved. Ai Group suggests the current scheme is so convoluted that it is highly unlikely, except in the most blatant of cases, that a supplier would be convicted of non-compliance. This is encouraging some suppliers, who gain commercial benefit, to continually explore methods of avoiding MEPS compliance. The only losers are the credibility of the energy label scheme, consumers and the environment.

Ai Group argues strongly that the current system does not allow for effective enforcement and requires modification.

5. Enforcement options

Ai Group suggests that a first step in improving the current process should focus on discouraging non-compliance in the first instance. Should non-compliance be shown, a more streamlined process is required than is currently in place. This will ensure that ongoing damage to the environment, from the continued sale of quantities of non-compliant product during the enforcement escalation process, is minimised.

The *Supplementary Discussion Paper* suggests that the lack of comprehensive import and sales data in Australia has contributed to delays in enforcement activity. Ai Group would argue that this is not a reasonable supposition and we do not agree with the proposal to collect market data from suppliers. Timely enforcement is a real issue but it is not predominantly dependent on sales data. The current system of government tenders twice yearly for each specific test program is very time consuming. Often by the time the test laboratory completes the work and provides the test report, the product has already been removed from the market. The screen test then becomes a waste of money for any meaningful enforcement activity under the current regime.

Timely enforcement also requires a quick response from the test laboratory and consistent follow up by the regulator. As a comparison, various electrical safety regulators are able to investigate market reports, single out products and arrange for testing within days or weeks.

The enforcement option that concerns most suppliers is adverse publicity. Public shame of suppliers is a very powerful incentive for suppliers to comply with obligations. Relationships and trust between suppliers and consumers and more importantly, suppliers and retailers would be affected by adverse publicity. The relationship with retailers is particularly valuable to suppliers and is highly sensitive to adverse publicity. The potential losses from adverse publicity would be a big incentive for suppliers to comply with their obligations.

“On the spot” fines are often attractive to suppliers because of the reduced fee and the lack of publicity. However “On the spot” fines would be much more effective if they also included adverse publicity. The current WELS scheme of public disclosure, but only after the case has proceeded through the courts, is not an effective incentive to comply and should not be replicated.

Ai Group supports the suggestion that the Reach for the Stars program, used in West Australia, be adopted nationally. This would be a positive step to support retailers with information and assistance in complying with the scheme.

6. Powers of MEPS inspectors

Ai Group agrees with the inspection powers summarised in Box 3 of the *Supplementary Discussion Paper*. We also believe that inspectors should have the power to randomly inspect premises at short notice for audit purposes.

ABOUT Ai GROUP

The Australian Industry Group (Ai Group) is a leading industry association in Australia. Ai Group member businesses employ around 750,000 staff in an expanding range of industry sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other related service industries.

In response to the *Supplementary Discussion Paper*, Ai Group conducted industry consultations with members of our Electrical Appliances and Accessories Forum.

Electrical Appliances and Accessories Forum

Electrical Appliances & Accessories (EA&A) Forum addresses the technical and regulatory environment affecting supply of electrical appliances and electrical accessories through interaction with regulators and participation in standards bodies. This Forum is particularly focused on electrical safety, energy efficiency and environmental issues associated with appliances.