



Australian Government

Department of the Environment and Energy

NRSIEE Roundtable

Tuesday 12 September 2017





Product Emissions Standards framework legislation

New legislation

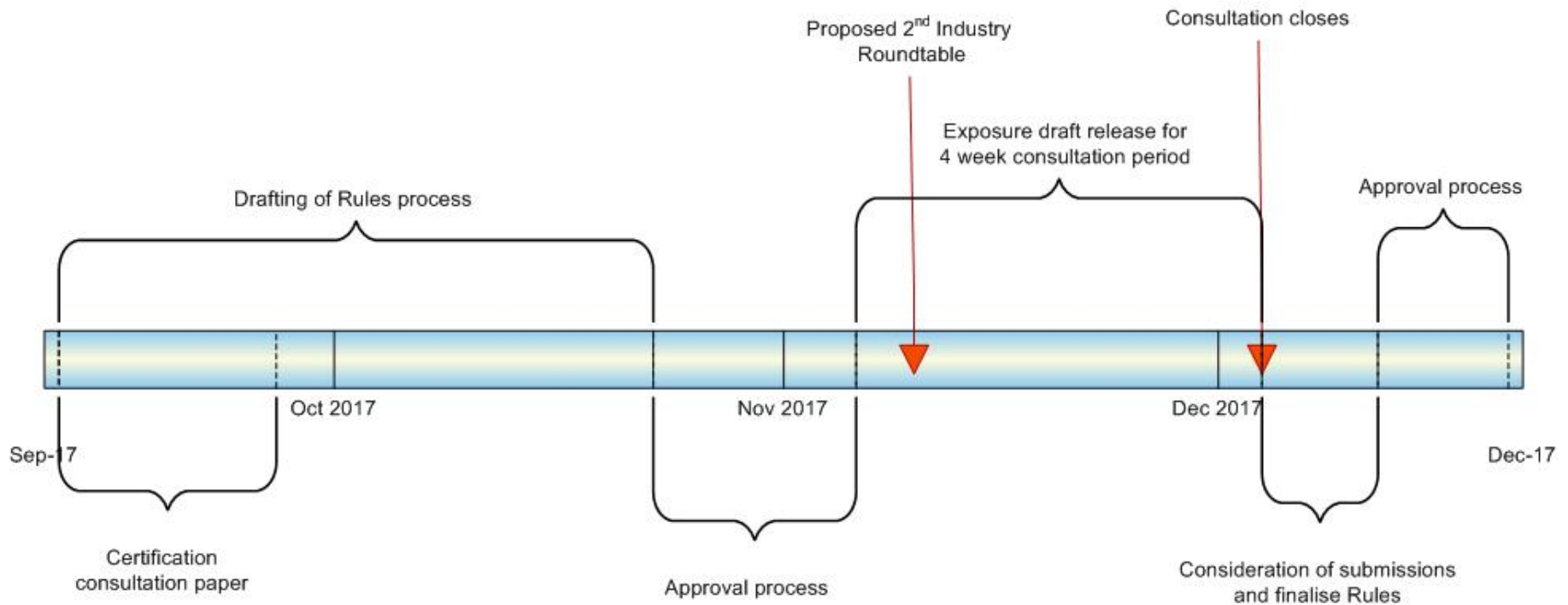
Product Emissions Standards legislation consists of:

- Product Emissions Standards Act (2017)
 - Product Emissions Standards (Customs) Charges Act (2017)
 - Product Emissions Standards (Excise) Act (2017)
 - Product Emissions Standards (Consequential Provisions) Act (2017)
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New legislation

- Framework legislation establishes mechanism for the Minister to prescribe emissions-controlled product
 - Includes compliance and enforcement powers from the Regulatory Powers Act
 - Establishes import and sale offences for emissions-controlled product
 - Details of the products, the standards they need to meet and administration processes will be in Rules made under the Act
 - An Exposure Draft is anticipated for release in November prior to the Rules being made in December 2017
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Timeline for developing Rules





Exemptions

Exemptions

Proposed approach to exemptions

- Included to cater for specific business needs and special requirements
 - Apply in limited circumstances where compliance with the standards is not possible, appropriate or would have perverse outcomes
 - Could include a range of conditions such as sale restrictions, storage requirements, usage restrictions and reporting
 - Applications for exemptions made through the Department's website
 - Exemption numbers entered in community protection question at the border
 - Exempt engine marking and documentation requirements
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Exemptions

Purpose	Conditions
Testing, evaluation and display	Not for sale, limited number and time, may include re-export or destruction requirements
Military or national security services	Military or national security services request Confirmation that no compliant alternative is available
Imported for re-export	Not for domestic sale, Reporting and storage and requirements
Authorised rescue and emergency services	Authorised emergency service confirmation required, Limited number of items, Limited duration of exemption, Confirmation that no compliant alternative is available
Competition engines	Limited number of items, Limited duration of exemption, Confirmation that no compliant alternative is available Proof of Bona Fide competition requirement, Usage restrictions
Replacement marine propulsion engines	Limited number of items, Limited duration of exemption, Confirmation that no compliant alternative is available Proof of Bona Fide requirement



Certification

Certification

NRSIEE Rules will provide detail on certification requirements and the Australian certification process, including:

- Australian standard will adopt the relevant technical requirements of the emissions standards administered by the US EPA
 - Post 1 July 2018, all new engines or equipment imported to Australia must have Australian certification or be certified to a recognised international standard
 - Post 1 July 2019, all new engines or equipment supplied in Australia must have Australian certification or be certified to a recognised international standard
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Certification

- International standards recognised as being compliant with the Australian emissions standards:
 - United States Environmental Protection Agency (US EPA)
 - member states of the European Union (EU)
 - Canadian Department of the Environment and Climate Change
 - California Air Resources Board (CARB)
 - Engines and equipment certified as meeting one of the above will automatically be eligible for import into and supply within Australia
 - Engines and equipment not certified to one of the above must be approved for Australian certification prior to import (post 1 July 2018) or supply (post 1 July 2019) in Australia
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Certification

- Modifications – advice required



Australian certification process

Process
managed by
applicant

1

- Registration
 - Department's online portal

2

- Emissions testing
 - Facility must demonstrate capability to conduct testing (e.g. ILAC accredited)

3

- Application
 - Submission of test results and other required information through online portal

4

- Payment of fees
 - Two levels of fees being considered related to the accreditation of the test facility

5

- Assessment of application
 - Timing dependent on accreditation status of test facility, receipt of payment and all required information (~60 days)

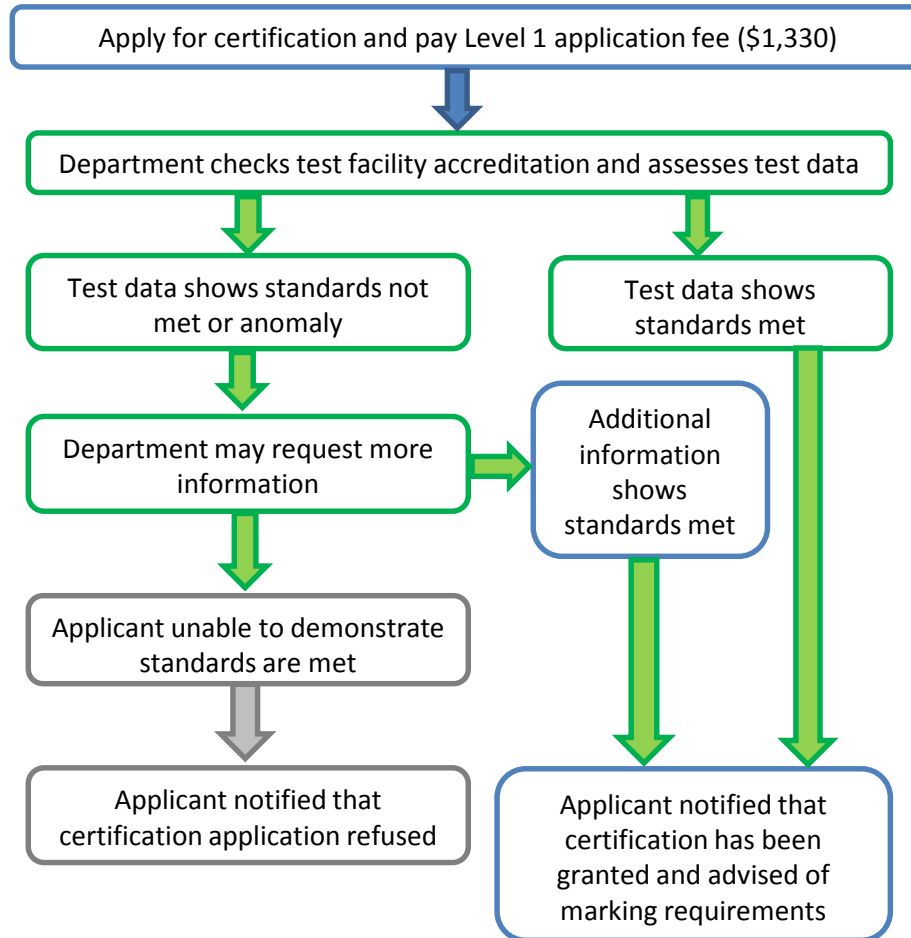
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- Notification
 - Approved - Certification of Conformity granted
 - Not approved - advice on nature of non-compliance

Process
managed by
Department

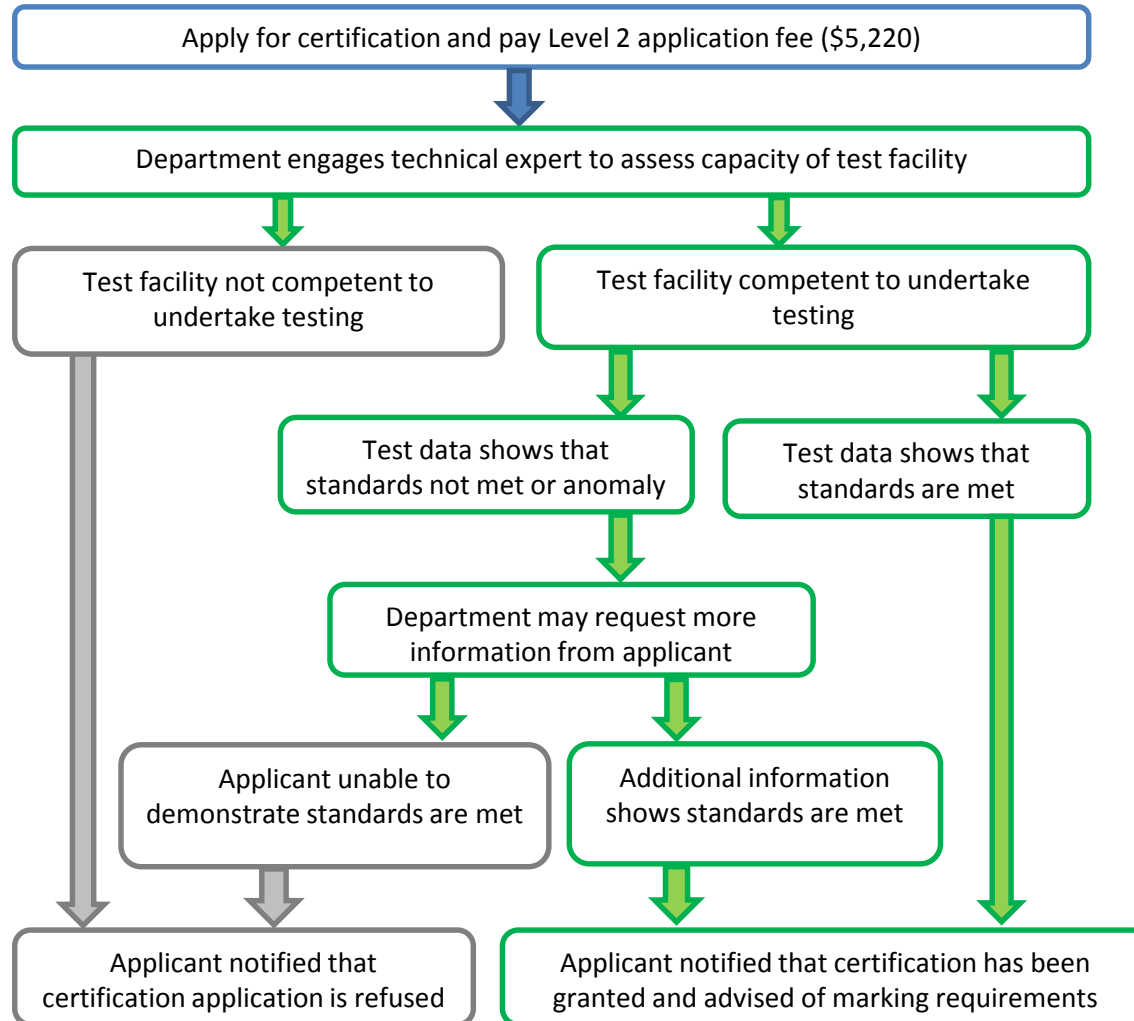
Australian certification

Engine testing completed by ILAC-accredited facility



Australian certification

Engine testing completed by non-ILAC-accredited facility



Australian certification consultation

- Feedback on discussion paper invited
 - Comments by 27 September 2017
 - Electronic copy to be circulated to industry associations
 - Feedback will help inform the drafting of Rules
 - Further opportunity for feedback on the certification process through exposure draft
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Cost recovery arrangements

Cost Recovery – Fees and levies

The costs of administration of the NRSIEE scheme will be recovered through cost recovery arrangements involving fees and levies

Fees

- charged for applications for engine certifications and for exemptions
- based on the cost to the department for processing the application
- payable before an application is assessed

Levies

- apply to all imports (and domestic engine manufacture)
- based on the value of the import
- calculated using import data collected by DIBP at the border

Cost Recovery Implementation Statement to be released for consultation before the details of cost recovery are settled – figures are indicative only

Cost Recovery – Fees and levies

Indicative Fees

NRSIEE Product Certification to Australian Standards	Fee
Certification application (ILAC testing)	\$1,330
Certification application (non-ILAC testing)	\$5,220
Exemptions	
Testing, evaluation and display	\$390
Military or national security services	\$550
Imported for re-export Authorised rescue and emergency services Competition engines	\$1470
Replacement marine propulsion engines	\$1470

- Applications for certification and exemptions through the Department's website
 - Fees are payable on submission of application
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Cost Recovery – Fees and levies

Indicative Levies

- Based on a percentage of the value of an import
 - 0.54% of value applied across all imports (and manufacture)
 - High item value cap of \$40,000 (max. per item \$216)
 - Low levy cut-off \$140 per importer per year (equates to imports of over \$25,926 over a 12 month period)
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Cost Recovery – Fees and levies

Suggested levy timeline (annual)

- July – previous financial year import data – potential levy liability notices
 - End September – cut off for importers to amend import declarations
 - October – previous year import data re-issued to the Department – levy invoices
 - December – full payment of levy amounts due
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Cost Recovery – Fees and levies

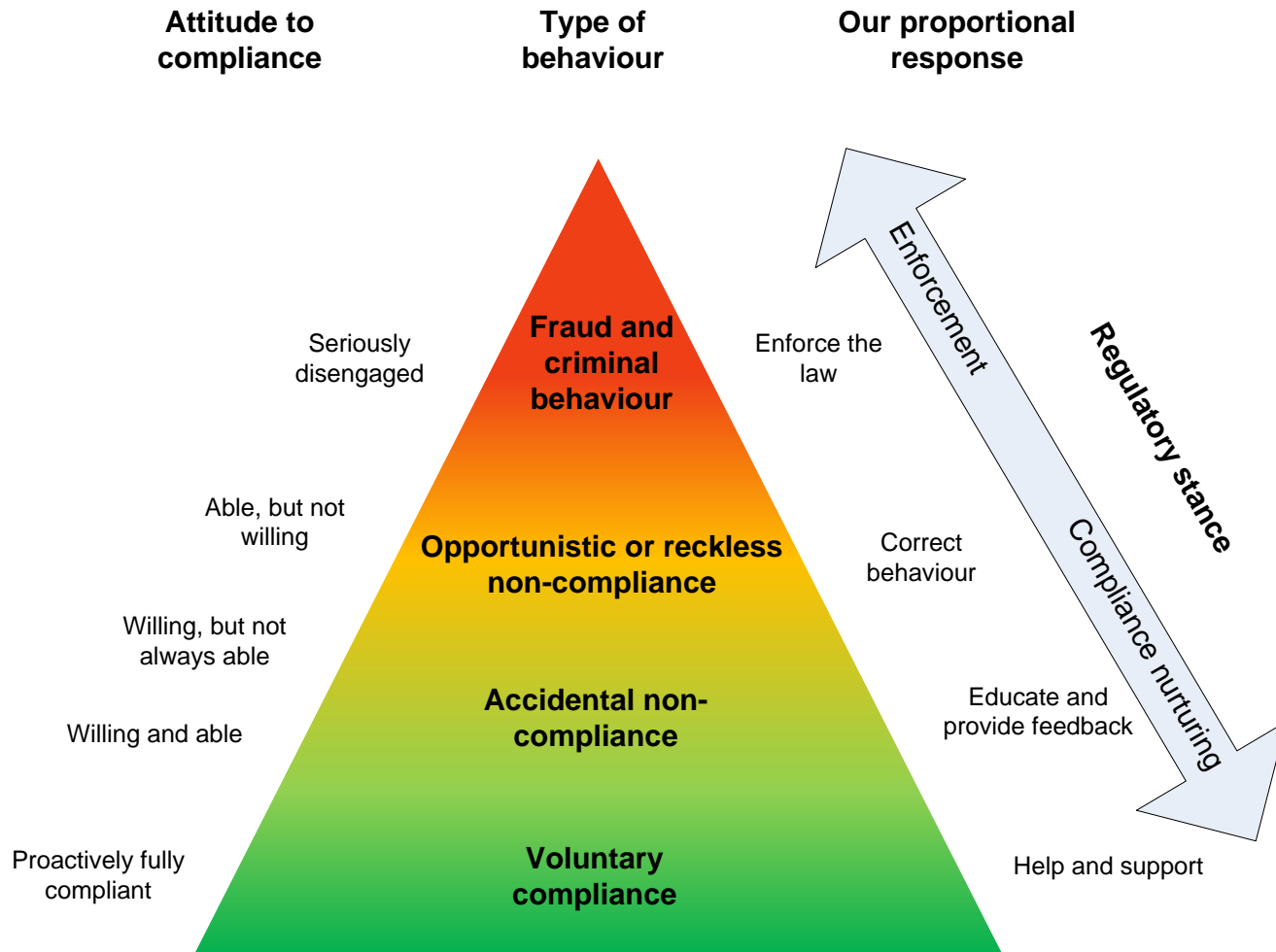
Levy design considerations

- Other approaches modelled (flat levy per import line item or per NRSIEE item) result in cross subsidisation or gaming risk
 - Levy needs to reflect the key cost drivers
 - The levy will change over time depending on the scale of industry and the Department's delivery costs
 - Annual payment reduces costs and therefore levy rate
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Compliance

Regulator response model



What compliance are provided in the Bill?

The Product Emissions Standards Bill

- Establishes offences and civil penalty provisions relating to the import of an emissions-controlled product to Australia, or supply of that product within Australia, if the product is not certified or marked in accordance with the rules for that product
 - Triggers the compliance and enforcement provisions of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth)
 - Provides for additional compliance and enforcement powers to support the objectives of the Bill
 - Enables the sharing of information obtained under the Bill with other agencies and the publication of certain information relating to an emissions-controlled product
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What are the key provisions in the Bill?

- **Part 3** establishes the offence and civil penalty provisions associated with
 - the import or supply of uncertified emissions-controlled products
 - the marking of uncertified emissions-controlled products
 - the incorrect marking of emissions-controlled products
 - **Part 4** enables the Rules to specify the record keeping requirements for importers, suppliers and Australian manufacturers
 - **Part 5** establishes a compliance and enforcement regime by adopting the standard suite of provisions under the Regulatory Powers Act
 - **Part 6** provides for seized and forfeited to the Commonwealth in certain circumstances
 - **Part 7** deals with the appointment of inspectors, the publication and disclosure of information, and the conduct of audits to ensure compliance with this Bill
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Importing products

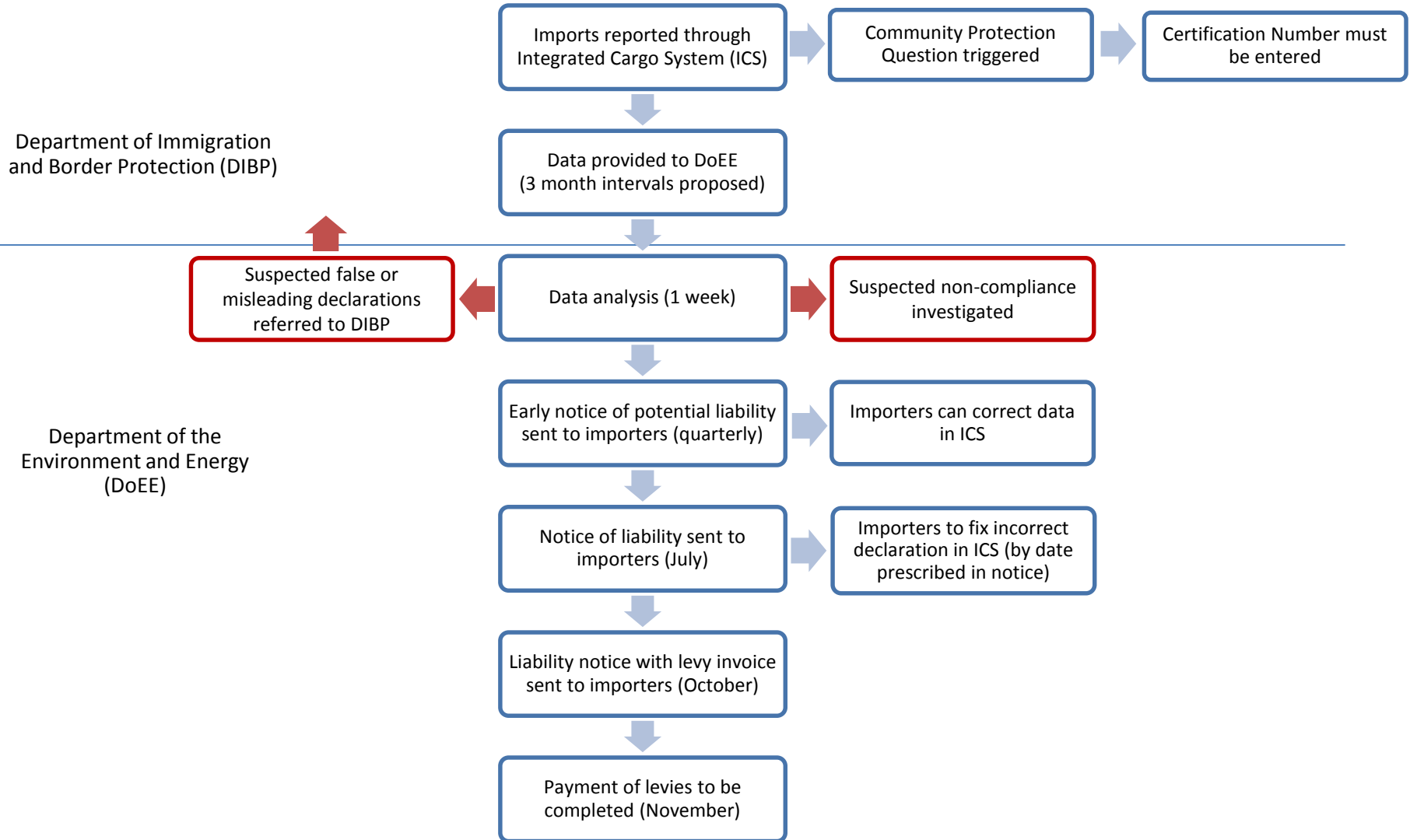
- Subclause 13(1) prohibits the import of uncertified emissions-controlled products
- Subclause 14(1) prohibits the import of certified emissions-controlled products which are not marked as required in the Rules

Penalty	Maximum penalty units per contravention [♦]	Maximum amount per contravention*
Strict liability offense (individual)	60	\$12,600
Strict liability offense (body corporate)	300	\$63,000
Civil penalty provision	120	\$25,200

♦ One contravention = one product

* As at 2017 where each penalty unit is \$210

Compliance on imports flowchart



Supply of products that are not certified

- Subclause 15(1) prohibits the supply of uncertified emissions-controlled products
- Subclause 16(1) prohibits the supply of certified emissions-controlled products which are not marked as required in the rules

Penalty	Maximum penalty units per contravention [♦]	Maximum amount per contravention*
Strict liability offense (individual)	60	\$12,600
Strict liability offense (body corporate)	300	\$63,000
Civil penalty provision	120	\$25,200

♦ One contravention = one product

* As at 2017 where each penalty unit is \$210

Records

- Subclause 20(1) allows the Rules to require importers or suppliers of an emissions-controlled product to make and keep records
- Clause 21 allows the delegate to require records be provided to the Department where there is reasonable suspicion the Rules have been breached

Penalty	Maximum penalty units per contravention [♦]	Maximum amount per contravention*
Strict liability offense (individual)	40	\$8,400
Strict liability offense (body corporate)	200	\$42,000
Civil penalty provision	80	\$16,800

♦ One contravention = one event

* As at 2017 where each penalty unit is \$210

Reporting on manufacture

- Clause 22 requires a person who first supplies an emissions-controlled product manufactured in Australia to report on products supplied in a reporting period
- Reporting will determine the levy liability

Penalty	Maximum penalty units per contravention [♦]	Maximum amount per contravention*
Strict liability offense (individual)	60	\$12,600
Strict liability offense (body corporate)	300	\$63,000
Civil penalty provision	120	\$25,200

♦ One contravention = one product

* As at 2017 where each penalty unit is \$210

Scenario 1

A container with 500 non-compliant generators is imported into Australia.

Customs collects data and reports the import to the Department.

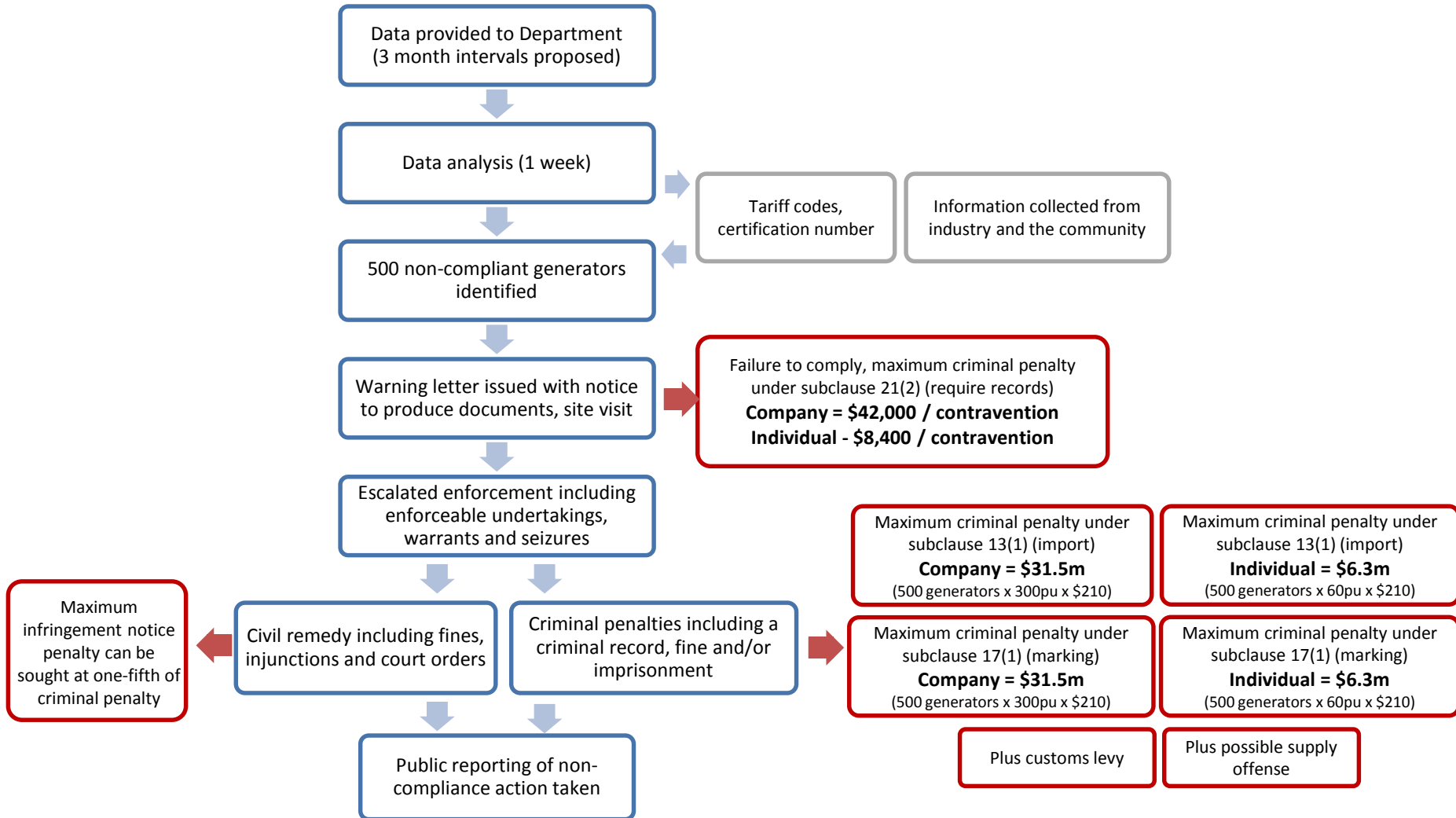
The Department writes to the importer.

The importer ignores the letter.

A month later the Department pays a visit and finds the generators are sold.

What will happen?

Scenario 1 response



Scenario 2

In August 2019, a national retailer supplies non-compliant mowers at a discounted rate.

The Department is notified by a member of the community through the online reporting form.

By this time 4,000 units have been sold.

The national retailer is proposing to hold another sale in 6 months.

What will happen?

Scenario 2 response

Department continuously scanning the market for NRSIEE products for sale through desktop audit and site inspection
 Mechanism for reporting of suspected activity by industry and the community

Non-compliant products identified

Retailer contacted and warning letter issued

4,000 non-compliant mowers sold

Notice to produce documents issued, site visit

Failure to comply, maximum criminal penalty under subclause 21(2) (require records)
Company = \$42,000 / contravention
Individual = \$8,400 / contravention

Escalated enforcement including enforceable undertakings, warrants and seizures

Civil remedy including fines, injunctions and court orders

Criminal penalties including a criminal record, fine and/or imprisonment

Maximum infringement notice penalty can be sought at one-fifth of criminal penalty

Maximum criminal offense under subclause 15(1)
Company = \$252m
 (4,000 mowers x 300pu x \$210)

Maximum criminal offense under subclause 15(1)
Individual = \$50.4m
 (4,000 mowers x 60pu x \$210)

Maximum criminal offense under subclause 17(1)
Company = \$252m
 (4,000 mowers x 300pu x \$210)

Maximum criminal offense under subclause 17(1)
Individual = \$50.4m
 (4,000 mowers x 60pu x \$210)

Public reporting of non-compliance action taken

Where products imported post 1 July 2018, import offense will apply

Scenario 3

An individual sets up an online shop and sells NRSIEE.

The online supplier does not have a warehouse but buys cheap products from another country and has them shipped directly to the customer.

The seller sells hundreds of units a month.

Some of these units are non-compliant.

What will happen?

Scenario 3 response

Department continuously scanning the market for NRSIEE products for sale
 Mechanism for reporting of suspected activity by industry and the community

Non-compliant products identified in online advertising

Investigate Australian status of supply

Host website notified with formal request to remove site

Warning letter issued to online supplier with notice to produce documents

Failure to comply, maximum criminal penalty under subclause 21(2) (require records)
Company = \$42,000 / contravention
Individual = \$8,400 / contravention

50 non-compliant products identified as being sold

Escalated enforcement including enforceable undertakings, warrants and seizures

Maximum infringement notice penalty can be sought at one-fifth of criminal penalty

Civil remedy including fines, injunctions and court orders

Criminal penalties including a criminal record, fine and/or imprisonment

Maximum criminal offense under subclause 15(1)
Company = \$3.15m
 (50 products x 300pu x \$210)

Maximum criminal offense under subclause 15(1)
Individual = \$0.63m
 (50 products x 60pu x \$210)

Maximum criminal offense under subclause 17(1)
Company = \$3.15m
 (50 products x 300pu x \$210)

Maximum criminal offense under subclause 17(1)
Individual = \$0.63m
 (50 products x 60pu x \$210)

Public reporting of non-compliance action taken

Where products imported post 1 July 2018, import offense will apply

Role of industry

- Industry has an important role to play in the success of the NRSIEE scheme
 - Industry needs to be ready to comply with the standards
 - Industry can share information or concerns about non-compliance
 - The Department will provide multiple channels for industry and the community to report information or concerns
 - NRISSE hotline
 - Online reporting form
 - Email
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Ongoing improvement

- The level of compliance and the Department's approach to compliance and enforcement will be continuously monitored with improvements implemented where necessary
 - Compliance Strategy evaluated annually
 - Annual compliance and enforcement workplan developed
 - Annual reporting on performance measures
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Communications and engagement

Communication and engagement opportunities

