Submission Summary

The Greenhouse and Minimum Standards Act ('GEMS Act') has always required full service cost recovery from registrants paying registration fees. Stakeholders have consistently urged administrative decision-making be more transparent and responsive in exchange for this fee. This submission advocates that the design of the registration fee system in 2018 better reflect these principles.

The Departmental sponsored option of continuing four fee bands is rejected. The present scheme was developed as a 'transition' from state operated schemes in 2012 where one fee set for all products was the approach (representing as a notional average cost of administrative servicing across all regulated equipment types). The Act replaces the single fee concept in favour of the registration fee reflecting the reasonable cost involved in the regulation of the various equipment types included in the equipment energy efficiency program.

It follows that to avoid registration fees of one equipment type subsidising the administrative costs associated with any other equipment type that a unique registration fee for each individual equipment type be set, after all variables included in the registration fee are known. Only where evidence exists that the total costs for each of the 20+ equipment types is similar should the administrative convenience of fee bands be contemplated.

The Commonwealth scheme is founded on the principles of only recovering costs of specific services (as well as avoiding cross subsidisation between registrants and across product types). The legislation authorises only these elements to be included in the registration fee. Sadly, these principles are compromised in the proposal championed by the Department in the latest Fees Review discussion paper.

PALS argue a 'cost recovery' scheme should retrospectively measure actual costs authorised for recovery under the Act. The legislative authority and stakeholder views authorise a cost recovery system (NOT a cost justification regime using best estimates of the potential cost of future services as is being proposed by the Department).

The registration fees system should be based on recovering actual costs associated with identified registration and compliance activities in the immediate past. The Department should use evidence collected over the period 2012 to 2017 to identify the actual costs to be recovered by future registration charges. When applied to each regulated equipment type, the Department will not only be in a better position because its costs are known but also it will be able to explain or justify these costs to stakeholders.

The current scheme was developed as a transition from various state government schemes where every registration was charged the same amount,

irrespective of the work or costs involved. The four fee bands created in 2012 were part of the transition toward product registration fees reflecting the true cost of administrative services and enforcement activities as required by the GEMS Act. Simply continuing the fee band transition already identified by the Department and stakeholders is an untenable compromise. It was a compromise created when the Commonwealth did not have data on its likely costs or reliable costings from state agencies. Five years on, the Commonwealth has access to its expenditure on all authorised elements of the registration fee. This information should be used to calculate registration fees. The four fee bands transition cannot achieve complete cost recovery and continues financial cross subsidies from some suppliers in favour of other registrants.

This submission argues a more fulsome review of the present registration fee system is required not only to incorporate the identified principles but also to ensure only authorised costs are recovered. While agreeing with the Department that cost recovery is an essential part of the GEMS legislation, PALS calls for all aspects of past cross subsidisation between registrants to be withdrawn in favour of a scheme where each user pays for the services they create or use.

The Standing of PALS

Partners in Appliance Labelling Systems Limited (PALS), is a not-for-profit company limited by guarantee, established by experts in energy efficiency and regulatory measures. While the company has working relationships with some registrants and other stakeholders with particular views in this debate, the views expressed in this submission are those of the Members of PALS.

PALS Members have more than 50 years combined experience in end-use equipment energy efficiency programmes. This experience covers positions involving a range of perspectives representing many of the various categories of stakeholder groups. This lengthy and varied experience has built a degree of expertise in the subject material and is the basis upon which the company offers alternate ideas to structure the future registration fee system.

The Structure of this Submission

The submission is broken down into three sections.

A series of design principles are identified from the legislation and from past industry representations. These principles and the arguments in support of them are contained in the first section. The second section proposes a series of recommendations to assist the Department apply these principles in the design of the future registration fee system. To further assist Departmental officials understand these ideas and concepts, a case study of one regulated type, building chillers, is reported in section three to demonstrate and explain the preferred approach. It showcases in practical terms how the proposed registration fee for that product can be changed to meet a cost recovery scheme.

The conclusion summarises the PALS position that the future registration fee must meet stakeholder expectations, must give the Department certainty in estimating revenue for cost recovery purposes, must comply with all legislative requirements and must not be administratively cumbersome to operate.

Section 1 - Context for the Registration Fees Review

The Department of the Environment and Energy (the Department) invited stakeholders to comment on its proposed charges associated with the delivery of registration and compliance services under the Greenhouse and Minimum Standards Act 2012 (the Act). The first invitation occurred in 2016 with this latest consultation closing in February 2018. Registrants and interested stakeholders are encouraged to comment on the Department's preferred change to the amount of funds collected from suppliers of prescribed equipment under the authority of .the Act.

The most recent discussion paper advises that the Australian Government's approval for the Commonwealth equipment energy efficiency programme was made on the basis of full recovery of all costs associated with the registration service. Very few stakeholders challenge this position as other than fair and reasonable in the circumstances. The Departmental position mirrors the Commonwealth Guideline for recovering costs associated with regulatory authorised registration requests.

The paper also reports an intention to 'phase-in' cost recovery of all compliance monitoring and enforcement activities associated with the programme. This position is justified because complete cost recovery was not achieved in 2012 with the passage of the Act. The Department asserts that this original compromise was only a transitional state because there is a clear expectation that full cost recovery must be achieved for the programme. The Government apparently has consistently advocated such a policy position despite not increasing fees since the inception of the program in October 2012 (more than 5 years ago). As this issue has not arisen in discussions with industry, the clear expectation must be held by central Commonwealth agencies responsible for revenue collection. No funds collected from registration fees are used by the Department to fund specific services; all funds generated are sent to the Treasury.

The discussion paper asserts the plan is now to impose full cost recovery upon registrants by no later than 2020-2021. This is almost a decade after the programme commenced with exactly the same financial recovery requirement said to be imposed on registrants. When the legislative mandate is explained to stakeholders about service cost recovery, few continue to argue the service should be free or charge less than the cost of efficiently operated service delivery by Departmental staff.

Section 1 - A Principled Approach to designing the Registration Fees System

The Act provides clear, concise instructions about the services subject to cost recovery included in registration fees. This legislative mandate can be read as including the goal of avoiding cross subsidisation of fees amongst registrants. Stakeholders, too, have provided unequivocal statements about their expectations for the final registration fee system. The discussion paper reports those as calls for improved transparency and greater accountability. All these considerations need to be balanced in striking a fair, lawful compact covering future registration fees.

The Department must incorporate these concepts into the administration of the registration and compliance services. In essence, stakeholders want a partnership with the Department; consultation in exchange for their financial contribution paying for the designated services. Several of this submission's recommendations suggest how the department could give effect to these sentiments.

These concepts represent ideas that the Department should incorporate into its preferred option for the future registration fees system. Should the department not address these ideas, it cannot expect stakeholder support for the final solution. Put another way, these principles record the foundations upon which stakeholders expect the Department to build its preferred option for the revenue system.

These sentiments have been expressed throughout the multi-year consultation. They have not changed radically through the rounds of consultations with the Department on these issues. In the first round of consultation reported by the Department, stakeholders considered that full cost recovery for GEMS should be contingent on improved transparency about the operation of the programme and greater administrative responsiveness in exchange for increased registration revenue. Stakeholders wanted any proposal to increase registration fees predicated on demonstrated improvement in administrative processing efficiencies. The Department appeared to accept it had the onus to establish any potential fee increase was not the result of administrative inefficiencies as it has subsequently collected data on a number of issues germane to the debate..

The other consistent theme from all industry stakeholders was that the final cost recovery scheme should not involve cross subsidisation by one registrant for another. Industry stakeholders are pragmatic entities and will accept some limited cross-subsidisation across the 20+ GEMS regulated products currently regulated. This concession translated into initial support for the Fee Bands proposed when the Act became operational. Registrants do not want cost recovery and the absence of cross subsidisation, if this adds too significantly to the cost of the entire fee system.

In keeping with this pragmatism, stakeholders made suggestions to minimise cross subsidies and ease the administrative workload of agency staff. One option was to increase the number of fee bands so as to bundle equipment types with similar operational costs. Another was that each product category set its own fees, calculated to reflect the actual cost of the services rendered to just those registrants so that no cross subsidisation was imposed (across products types or even within equipment types across competitive suppliers). These representations are practical solutions to the cross subsidy problem but have not been addressed in the Department's preferred position of maintaining four fee bands.

The most recent discussion paper records the department's preferred proposal. The description of that proposal is prefaced by the claim it was developed after looking at the costs of registration and compliance activities, including efficiency gains.

The purpose of this submission is to challenge that as a claim unsubstantiated by reliable evidence in the discussion paper. PALS believe that the Department has failed to consider fully the legislative mandate and stakeholder views in opting to continue a registration fees schemes based on four fee bands. Little evidence is provided that justifies this illogical proposition to cover the 20+ equipment types regulated by the Act. The arguments for maintaining the status quo do not address the principles required by the Act and stakeholders but rather is supported by generally applicable assertions. While the registration fee was calculated using estimates of future registrations to move the system past the single registration fee charged by state entities, the four fee band system was only ever a transitional step. With more equipment types being regulated, the difficulty of fitting every product within the four bands is not acknowledged.

A step towards the principles demanded by the Act and stakeholders but, as the most recent discussion paper admits, never achieved full cost recovery of the services identified in the Act. Indeed, the proposal to delay full cost recovery for a further 5 years should be rejected as too long a transition and an overly cumbersome way of adjusting registrants' expectations to higher registration fees over time.

PALS suggests that continuing the compromise struck in 2012 to generate public support for the passage of the Act should not be the basis for the future registration fee system. It is past time for full cost recovery, no cross subsidisation, enhanced transparency and accountability to be the foundations for the future registration system.

Section 1 - Further evidence could be collected & released to justify the proposed fee system

In 2016 & 7, the Department conducted a range of activities to improve the information available about the fees system, reported as:

- a detailed time allocation survey and analysis of GEMS staff to clearly distinguish time spent on cost-recoverable and non-cost recoverable activities
- analysis of check-testing costs to ensure they are accurate and reflective of the current check-testing practices
- re-visiting the fee band allocation purportedly to reduce any significant cross-subsidisation
- recognition of increasing efficiencies in staffing allocation
- clearly explain the key registration and compliance activities.

This information is helpful to the debate and the Department should be commended for sharing this information. There are, however, other elements of the scheme, operating now for five years, which could also have been measured and reported to the public to help support developing the best possible scheme. While there may be sensitivity about future enforcement targeting and publicly announcing test numbers or targets before such activities are undertaken, there can be no such complaint about transparently reporting the number of tests and the total amount spent on testing in past years by the Department. This "after the event" information would evidence the Department's compliance commitments and provide a fair way to "cost recover" these services. The total compliance spend each year since 2012 has not been broken down by equipment type or even within the four endorsed fee bands.

In the same way that the administration staff 'time and motion' study was used to generate important information about costs (the Department reports its view that this evidence supports a standard application processing fee to cover staff time as the best option), data about PAST compliance activities (not future estimations) will be a fairer way to allocate costs to registrants.

The past discussion papers have not presented any such data so the logic for maintaining the four fee bands is not evidenced. Put another way, the logic that a unique registration fee for each type of regulated equipment (calculated to cover the administrative processing and enforcement activities of that unique product) because this approach ensure no cross subsidisation can occur, has not been overturned. Past discussions should be characterised as wanting to avoid having unique registration fees for each regulated equipment type only if this results in too cumbersome a scheme to administer effectively and efficiently.

The procurement and contracted testing costs of regulated equipment types varies significantly. An EPS or a light globe may cost only a few dollars to purchase but the testing time (and therefore costs vary greatly). The procurement of electric motors and distribution transformers are much more expensive than many other regulated products and sometimes may require transportation across the country or to overseas facilities. It is very hard to imagine that a standardised fee for all 20+ equipment types does not involve substantial cross subsidisation even before the risk elements of a viable enforcement program are included. The preferred compromise of four bands of registration fees (suggesting 4 or 5 equipment types might be included in each band to cover all regulated equipment types) is well explained by the Department but not evidenced in the discussion paper.

The information required to meet the design principles is available to the Department. It could provide the evidence of past compliance expenditures between 2012-7 as a first step toward justifying the four chosen fee bands. It could explain its inaction for 5 years on registration fees (despite the Commonwealth cost recovery mandate, fees have not increased since the inception of the legislation in 2012). It could explain why (when the latest discussion paper admits that the current registration fees system still does not reflect actual costs and there is cross-subsidisation occurring across products) the past evidence of failure should be ignored when proposing exactly the same to create the future system. It could explain why if subsidisation has been so endemic since 2012, a proposal to continue cross subsidies to 2020-21 is in keeping with Parliament's decision about what costs to recover from registering companies. It could explain the sense in making a design choice based around the imprecise prediction of future trends rather than using exact measurement of all compliance costs from the immediate past. A system required to recover service delivery costs is better done using accurate known data rather than predictions and projections which despite best efforts are very unlikely to be accurate (when measured after-the-event).

A cost recovery system (especially one with elements of cross subsidisation justified as necessary for administrative expediency) requires more reliable data than has been presented by the Department. PALS asserts that the Department must turn its gaze to expenditures of the past to meet legislative and stakeholder requirements. By recovering what actually has been spent, the Department is more likely to strike a more equitable balance and avoid stakeholders substantiating claims of cross subsidy. While future registration numbers are still a variable, the amount spend on past enforcement activities removes great uncertainty from Departmental revenue predictions and gives all parties much more certainty about what to expect in the future (in terms of enforcement testing and resultant fees).

This recovery of actual costs is far more acceptable to stakeholders than promises made without a forum where the department can be held to account for its actions and expenditures paid for by registrants through the fees system. The recommendations contained in this submission posit a future system capable of meeting these expectations.

Section 1 - Problems with the Government proposed future system

The Department has opted to tinker with the transitional system created in 2012 when a complete overhaul is required. The preferred registration fees system advocated by the Department in the most recent discussion paper can be criticised as still exhibiting the flaws established by stakeholders and accepted by the Department in earlier dialogue. It maintains four fee bands when these obviously continue the cross subsidisation across equipment problems of the past. It entrenches the halfway solution accepted by Treasury before 2012 as the stop-gap solution instead of moving the 20+ equipment types regulated to a system where 20+ registration fees are charged to reflect absolutely cost recovery without cross subsidy. Only when the Department provides reliable information about past compliance activities can the decision for four fee bands ever be supported as fair. The only grounds presented as compelling evidence is past practice.

The proposed four-band fee system fails on too many levels if evidence is expected of its efficacy. It also does not provide a consultative structure whereby stakeholders can partner with the Department to monitor and review the system in a timely and responsive fashion. It will be another 5 years till a further consultation is commenced about what the future registration fee system should become. There is no forum for dialogue to occur on fee issues.

The transparency and responsiveness consistently requested by stakeholders is not a feature of the proposed system. The risk of non-compliance for products not regularly subject to check test is acknowledged in the sentiments of the paper but not in the public accounting by the Department. The variation in testing costs, numbers of tests and recovery of costs from companies found wanting by check-testing is seemingly dismissed as irrelevant or too hard to collect and report. The cross subsidisation by compliant registrants toward non-compliant registrants is not discussed in any depth. If cross subsidies are to be eliminated, the Department should take steps to avoid non-compliant company activities being covered by registration fee contributions of compliant companies. Compliant companies should never be expected to cover the cost of competitors who fail to meet their efficiency obligations.

Registrants will still be cross subsidising other companies and/or other products under the Department's preferred option. The discussion paper graphically evidences this claim. Table 5 on page 11 reports on average check test costs where close control air-conditioners standout in Band four. The testing costs of this equipment type are four times that of any other equipment bundled into this, the most expensive registration fee band. Cross subsidisation must occur in the future as suppliers of equipment other than close control machines pay additional registration fees to cover potential verification testing associated with this product type. The only alternate explanation is that past testing suggests the risk of non-compliance is four times less than alternate equipment types; a very unlikely hypothesis without any evidence in support!

This visual example is just one demonstration of the inequity continued by maintaining the transitional system. Whereas industry stakeholders may be willing to accept compromise for an administratively easy –to-operate system, the extent of this cross subsidisation is too much for any reasonable registrant to bear in a system that purports to apply a ‘user pays’ principle.

The proposed system does not meet long-established parameters that are stipulated in the legislation and supported by long-held Commonwealth non-cross subsidisation policies. The Department is proposing to increase incrementally fees over the next few years to manage the impact of cost recovery on registrants. In circumstances where countries around the world are urging immediate action on climate change, the continued delay of imposing registration fees that reimburse government agencies for their actions seems too lax or lenient to contemplate. Stakeholders expect regulations to be enforced as part of the social bargain struck when the GEMS legislation came into law. Registrants of a totally new type of equipment regulated under GEMS would not expect a phased in of cost recovery principles; it seems inconceivable and very unfair that a decade is required to have registrants finally meet their obligations under Commonwealth law.

The Department explains the rationale for the fee bands as reflecting differing check testing costs for each product but reports it is unable to predict or disclose the costs of check test activity for each product because it is “an intelligence led, risk based check testing program”.

The current form of considering enforcement activity could be reengineered; the component attributed to compliance within the registration fee could be past actual compliance costs not future predictions. The Department has the exact expenditure figures of all past enforcement activities for every regulated product between 2012-7. This exact figure could be annualised for each product type which when combined with the outcomes of Departmental time allocation surveys, would provide a much more accurate and predictable basis upon which to cost recover registration fees. The annualised check test cost is at least cost recovering historical costs and if a long view is taken exactly meets the sentiments of the cost recovery principle. Taking this approach would also avoid the cross subsidisation between product types and between companies when looking beyond an annual reckoning. With annual number of registrations by product a relatively predictable number, the Department has a sound and defensible way to justify costs to any party.

The discussion paper eschews reporting future enforcement priorities for sensible reasons. But the GEMS Regulator can publish its expenditure under the its Compliance Program after the event without compromising its enforcement priorities. This data would inform all parties of historical expenditures, allow a form of benchmarking to occur between equipment types and give much greater certainty to the process of calculating registration fees. It would also permit any interested person to review the efficacy of whatever fee system is in place, which speaks to the potential transparency of the registration fee system. The publication of this past expenditure information will not compromise the Department's future enforcement program (as models are chosen using the GEMS Check Testing Selection Criteria, considering previous check testing results with a future risk based approach). That information subsequently made public cannot be said to compromise future check tests which are dependent upon many factors including the:

- availability of GEMS product models in the market
- availability of suitable check test laboratories
- ability of check test laboratories to fit the anticipated number of check tests into their schedule
- ability of check test laboratories to complete the anticipated number of check tests in a given financial year, and
- the available budget.

In any event, the overall numbers of checktests are already publicly available (but not the disaggregated expenditure by product type) through the Compliance Monitoring Program as well as the results of check tests finalised in previous years by the GEMS Regulator on www.energyrating.gov.au.

The Department should abandon efforts at predicting possible enforcement expenditure in favour of using past check-resting expenditure to give greater certainty to calculating the compliance component of the registration fee system.

Section 2 - Recommendations for the design and content of the future system

Based on past consultation processes, a second publication by a Department in a series is usually a close-to-final proposal. Government consultation is seeking only fine-tuning comments from stakeholders. PALS submit that the flaws within the preferred option published in the second discussion paper are still so great that a complete revision is required. The lack of reliable evidence justifying that option and the time required to gather better data justifying a four-band registration system means that a further discussion paper should be published to inform all parties of any change to the fee system.

Under that approach, PALS and other stakeholders could rely upon the Department to review all submissions in formulating that final proposal but such a process would create great uncertainty for stakeholders (at least until the new proposal is published by the agency). PALS acknowledge this delay will cause hardship to some registrants. To fast track Departmental consideration of these principles, PALS wants to assist the Department with an alternate structure. This alternate structure better gives effect to the principles endorsed earlier in the submission. This preferred form of the registration fee system is postulated through a series of recommendations seeking to meet the main principles identified in this submission.

The reasoning for each recommendation is recorded in this submission. Because the revised system should operate from 2018 to 2023, the list of recommendations may appear repetitive or simple.

The prime recommendation is that the registration fee system adopts cost recovery as an absolute priority and not permit cross-subsidisation (across and within regulated equipment types). The issue of whether administrative convenience continues a number of fee bands for like costed equipment types is a second order consideration when defining the design principles for the future registration fee scheme. Some 16 sub-recommendations attempt to give substance to the prime recommendations.

Transparency

1 That the Department agree to use the E3 Review Committee (or create a specific consultative body) to seek and review stakeholder comments on all future changes to the registration fees system.

2 That the Department agree to publish a further discussion paper in 2018 describing its proposed recommendation to Ministers about the revised registration fee system and its rationale.

3 That the Department accept as the standard operating premise that each regulated equipment type should have its own registration fee calculated from the expenditure categories included in the legislation. Only where these calculations disclose the costs are similar to another regulated equipment type (similar being defined as not more than a 10% variation in total costs) can equipment types be bundled within a Fee Band.

4 That the Department agree to conduct a fee review at least every 5 years while agreeing to permit stakeholders to raise issues with the appropriate consultative body for debate. The next fee review, therefore, should commence no later than in 2022, coming into effect in 2023.

Accountability

1 That the Department agree to the principle that full cost recovery immediately upon regulation should be the approach for all newly regulated equipment types and the Department agree to cap any transitional arrangements specifically agreed for any equipment type to not more than one year.

2 That the Department agree to explain the rationale and the amount for each element used to generate the registration fee system for any newly regulated product type in a public statement, subject to formal consultation.

3 That the Department agree to publish its evidence to justify an increase in the registration charge for equipment types (ie the fee should not be automatically increased by CPI annually but rather by actual evidence of the increase in costs of the services provided by the Department or third parties).

4 That the Department agree to disclose any future administrative charges to the appropriate consultative body together with its justification to registrants before imposing those charges.

Cost Recovery

1 That the cost recovery component of compliance activities be based on actual costs incurred by the Department rather than estimations or projection of likely costs in the future (ie the scheme be based on

recovering known past costs not guesstimates of possible future expenditure).

2 That full cost recovery occurs for all equipment types already regulated within 2018/9 and not be further delayed as proposed by the Department.

3 That any cross subsidisation across registrants be completely disclosed and any fee band not permit more than 10% variation in actual costs.

4 That cross subsidisation of registration fees not apply in circumstances where individual registrants seek services from the Department that go beyond reasonable requests for education and information assistance. The test might be if the request generates value for other registrants the costs can be shared whereas if the benefit is solely for the company involved then a specific fee rendered. The consultative body can be asked for an opinion as part of the evaluation of such cases. The cost of those registrant-specific services should be recovered directly and completely from the company seeking the benefit and not from its peers unless a wider benefit can be identified.

Avoidance of Cross Subsidies between Registrants

1 That the Department agree to charge a registration fee for a family of equipment models at least twice that charged for a single product registration for every type of regulated equipment. The registration database should also disclose the status of a registration as either a single model or family of models as public information. The Department should also limit any modifications to registrations to a period of 6-9 months so as to charge registrants that seek to vary existing registrations to include later models without incurring registration fees. This practice is an obvious cross subsidy by companies which do not seek such amendments.

2 That the Department consult with affected registrants to determine if a family registration requires a higher amount than double the single registration fee (as a reasonable charge to cover likely to recover compliance and related activities).

3 That where a check test establishes the claims of the registrant have not been met, the cost of that check test should be recovered from the registering company directly by the Department and these costs should not be included in the amounts subsequently charged to all registrants of that equipment type as part of the registration fee.

4 That where a registrant company fails two checktests of any equipment type, the Department should ask that company to show cause why it should not be permitted to register models using the family procedure. [The family registration lowers financial costs to the company and should not be continued if the company has a history of failing to comply with the regulations, making it more not less likely to be tested in the future based on risk considerations].

Should the department adopt these recommendations, the resultant registration fee system will recover more of the costs associated with departmental services, reduce the financial aid provided by compliant companies to non-compliant while improving the overall transparency and accountability of the entire system.

Section 3 - Chillers as a case study demonstrating the fairness and equity of the proposed changes to the Registration Fee System

All buildings generate unwanted heat, whether from solar heat gain generated by the sun or from occupants using equipment inside the building. This heat needs to be removed to keep the people inside comfortable and to keep electrical and mechanical equipment operating within their thermal design limits. For larger buildings, chillers are the optimal form of air conditioning device. Chillers use a substantial proportion of office building electrical energy and are a priority equipment type for regulation in all OECD countries. Australia regulated chillers on efficiency grounds in 2009. Chillers represent a good example of how the recommended changes to the registration fee system can be assessed for their impact on companies engaged in registering product.

When first touted for regulation, chillers presented significant challenges to equipment energy efficiency programs originally designed to manage consumer appliances. Chillers are very expensive to purchase (many more light globes or consumer appliances can be purchased than building chillers especially within limited annual budgets). Chillers tend to be made to order rather than displayed on showroom floors for purchase (making procurement a challenge). Chillers are expensive to test in third party facilities and require significant infrastructure and expertise to accurately measure performance (while not so different to any other regulated equipment, the impact on fixed budgets of expensive testing air and water chillers can encourage regulators to prioritise measuring less expensive equipment because greater test numbers can be completed).

PALS believe chillers are a suitable case study because a closer examination of this equipment type's history demonstrates the fairness of the proposed retrospective recovery of testing costs. It is the alternate to using the predictive model advocated by the Department. That approach causes too many problems. While not binding the Department to a fixed number of check tests of individual equipment types, registration revenue is fixed and does affect check testing numbers and budgets. The current and proposed registration fees still impose significant costs on chiller registrants. This cost is justified because of the risk significant testing in the future would have on check-testing budgets. Because no actual chillers have actually been tested, a very large cross subsidy has been imposed upon chiller registrants to fund compliance activities for other equipment types.

Initially, chillers were included in the most expensive fee band of the Act. The rationale for that decision appears sound even when considered with the benefit of hindsight. With testing costs of individual units upwards of $25,000, the nearest accredited facility located in Asia (imposing significant extra shipping costs in addition to procurement), any benchmarking of chiller compliance costs would tend to place this volatile equipment type in the most expensive category to test.

Interestingly, while none of those considerations changed between 2009 and 2017, the Department is now proposing to move chillers to a cheaper registration fee band. One possible explanation is that though all these financial considerations remain constant, the lack of verification testing of chillers over 9 years is being acknowledged. Chillers are touted by the Department to move from the most expensive to the second most expensive Fee Band not because they are any cheaper to test but presumably because few tests are planned in the future. Relevant officials must have judged the risk to enforcement testing budgets as low because a move to a cheaper fee band is contemplated. Any significant increase in the number of tests compared to the past would have major budgetary impacts.

PALS do not accept the rationale for this proposal. The use of past history to predict the future is based on market circumstances remaining constant. This is not the case for the chiller market (not likely in any of the regulated product markets). This expectation of the status quo remaining constant for the future chiller market is fraught. Innovative products using hybrid technology are appearing on the market. Competition from close substitute products like air conditioners is increasing. In Australia, one local manufacturer has captured 35% of the market to lead all companies after only starting with its own designs 15 years ago. Chillers are far from a static market.

In the context of compliance, an accredited testing facility capable of testing to AHRI standards has opened commercial operations in 2017. The cost of transporting chillers overseas for testing can be avoided. The Department plans to tender for chiller testing (amongst all other testing) early in 2018. These market circumstances present new possibilities and considerations for the Department and, in PALS opinion, should result in changes to Departmental policy and check testing numbers in the future.

One approach is keeping the fee band as is. If the Department is planning to use the new test house by funding for a reasonable testing campaign from 2018 to verify major suppliers' efficiency claims, it would seem sensible for chillers to remain in Band 4 or even move to a higher bracket created especially to fund regular chiller testing over the next few years. All the past financial challenges still apply but with a test house on-the-ground and operating, many more tests can be conducted, if the budget and product prioritisation allows. The 2017 product prioritisation statement by the Department includes commercial equipment, which includes chillers.

Another approach might be a compromise attempting to balance increased testing with an acknowledgement that the lack of meaningful testing for the past 9 years has built a significant "credit" for chillers. Since 2009, chiller registrants have been cross subsidising tests of other equipment types and the Department might be seen to balance that past subsidy by having future fees subsidise chiller testing. It could be that current market intelligence suggests chillers are a compliant product type and the risk that the test facility will find problems in slight. It could be that thinking like this generated the compromise proposal that chillers move to Band 3 in the registration fee scale. An alternate scenario at least as probable is that suppliers are no longer focussing on energy efficiency and chillers could represent a class of product where compliance may be sub-optimal. At present, no one entity can say what is happening in the chiller market.

The approach championed by PALS in this submission is very different from trying to predict an unknown future marketplace. It advocates policy considerations not be used to design a cost recovery system. It proposes recovery of all expenditure in the past 5 years be used to as the system design tool for setting registration fees for the next 5 years.

In the valid exercise of its policy function, the Department has weighed stakeholder opinion too heavily instead of moving to a sound financial model of recovering actual compliance costs from registrants of that equipment type. The lack of a strong link between revenue generation and testing targets has meant that the policy scheme used in the past has not delivered certainty to any party. Cost recovery and avoiding cross subsidisation became minor considerations and not the true design drivers of the registration fee system as requested by stakeholders and instructed by Parliament.

Under the system proposed by PALS, all chiller registration fees would be based on check testing and enforcement actions completed between 2012 and 2017. Those known costs can be tallied and a compliance component calculated for all registrants to pay. Using this past period, avoids future fees being skewed toward future short-term enforcement priorities, which may or may not happen and may or may not include chillers. For example, chillers have not been a priority equipment type for many years but the most recent priority list does designate industrial equipment as a major concern for 2018. This priority listing might suggest more testing is contemplated in the future despite its impact on the testing budget.

While 2012-7 may have been a period of little enforcement action about chillers, that was a conscious decision of the Department using all of its resources and determining its priorities based on best available market information. The compliance component of the registration fee should be set using actual expenditure on that activity. Using this approach moves all parties away from justifications, blame or fault arguments toward a financial system that is devoid of prior justification and just allocates past total expenditure across the predicted registration numbers of the future. The Department has accurately predicted registration numbers in the past and there is no reason to suspect it will not continue to do so into the future. Some of the recommendations around product families will assist the Department in these estimations.

In a cost recovery system, the Department should not seek to recover non-existent expenditure based on even best intended areas of future expenditure. The risk of cross subsidisation is just too great to make that approach a valid design parameter. If the Department in its wisdom did not incur compliance costs in testing chillers between 2012 -7, it should acknowledge that fact in its registration charges between 2018-23.

If the Department determines chillers are a priority product resulting in significant testing of examples in 2018-23, those actual costs can be incorporated into the registration fees charged between 2024-2029. Industry is not avoiding fair registration charges if this approach were adopted by the Department in the future rather it would be making the whole scheme more transparent, without cross subsidies and cost recovery would be based on real, publicly available data assembled over the long term.

For example, If verification testing is not carried out for any reason (say, potentially a much cheaper option presents like a software tool measuring the boundaries of registration data or the Smardt test house is not successful in its check testing tender for any reason) then the registration fee in the following 5 year period will reflect that reality (and not predictions done now that the second highest fee band is needed to cover expected costs that are never actually realised).

Conclusion

PALS seek Departmental support to change the proposed registration fee system. These changes reflect past public sentiment and previous Parliamentary decisions. These changes avoid cross subsidies and better allocate costs across all registrants in a transparent fashion.

The use the extremes in the range of views demonstrate the value of this better compromise. An industry advocate may want one extreme; testing of all competitors' products with no registration fee charged to him. No charge because that company argues it employs locals, pays taxes and is worthy of public support. The Government might argue the contrary extreme position; the highest (or even second) highest of all registration fee bands is needed for chillers because of the extremely high cost of testing chillers. Despite little evidence of any compliance action over almost a decade, the agency might still argue that the potential cost of chiller testing is so high funds must continue to be stockpiled to cover the potential risk of significant non-compliance discovered sometime in the future. Both these extremes are unconscionable if fairness, equity and cost recovery from participants are the real design features of the registration fee system.

The compromise proposed in the most recent discussion paper by the Department is neither fair nor meets the legislative mandate. The Department should consider more certain alternatives for cost recovery and inform stakeholders of its revised position as soon as possible. The Department should regularise dialogue with key industry bodies on this issue. It should create a public consultation body to monitor costs, adjudicate upon complaints and judge requests for fee increases.

The Department needs to stop existing registration fee arrangements that exacerbate unfair cross subsidies between registrants, across equipment types or skew enforcement priorities. The past decisions about family registrations and amending existing registrations annually to include next year's models must be overturned immediately on equity grounds. With continued consultation about registration fee issues, stakeholders will have greater faith in the outcomes of Departmental reviews. The provision of regular time-and-motion studies of Departmental staff practices and more complete accounting of all financial expenditure detailing enforcement expenses will also help convince parties that unacceptable cross subsidies are not occurring.

The results of check testing need to be more widely promulgated and regularised. This applies not only to the impacts on those companies found wanting but also to ensure the costs of enforcing energy efficiency laws are not imposed upon those suppliers that consistent meet their obligations. Cost recovery across all registrants should be limited to services that have a wider industry benefit (and not just a benefit to the company involved). PALS support a ‘user pays’ approach to registration fees based around these ‘balances’.

The authors of this submission are ready to meet with Departmental officers to explain any issue or debate the merits of the proposed revision to the registration fee. If the Department is not to produce another public document recording its revised views having taken into account stakeholder views presented by February 2018, it should at least inform all parties so they can approach members of the Ministerial Energy Council directly.