



17 December 2018

Independent Review of the GEMS Act 2012 – Discussion Paper submissions
Appliance and Building Energy Efficiency Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

SUBJECT: 2018 GEMS ACT INDEPENDENT REVIEW DRAFT REPORT

Dear Ms Collyer

Thank you for the opportunity provided to the Gas Appliance Manufacturers Association of Australia (GAMAA) to comment on the GEMS Independent Review Draft Report.

GAMAA's primary activity is to work with members, governments and other industry stakeholders to develop and implement workable, safe and practical standards and regulations for the gas appliance industry. Our members directly employ the equivalent of 4,500 full time workers in Australia and we represent industry stakeholders on over 100 Standards Committees ensuring that GAMAA continues to have an appropriate input into the development of future standards. Our members include manufacturers of domestic and commercial gas space heaters, hot water and cooking appliances, suppliers of component parts and all Australian Conformity Assessment Bodies (CABS).

GAMAA welcomes a large number of the recommendations included in the draft report and is particularly supportive of the recommendations to continue to pursue genuine consultation¹, to reduce the regulatory burden on industry², to improve the process of Australian Standards development³, to release Determination exposure drafts⁴, and to investigate a systems approach to energy efficiency⁵.

This last point was particularly pleasing as it addressed one of GAMAA's key concerns – the need to recognize the emergence of energy network, third party home energy management providers and smart appliances as game changing events in the energy efficiency sphere.

¹ Recommendation 7
² Recommendation 15
³ Recommendation 6
⁴ Recommendation 5
⁵ Recommendation 37

On a less pleasing note, GAMAA's original April submission highlighted 3 other key areas of concern regarding the current operation of the Act:

1. The Use of Australian Standards as a Safeguard against Potential Misuse of the Act
2. The Need for Guaranteed Notice Period Between Determination and Implementation
3. Changes to Workstream Priorities Assignment by COAG

We are disappointed that our recommendations regarding these concerns appear to have been disregarded in the draft report.

These concerns remain critical to our members, and each of these three issues is re-addressed on the following pages. We would therefore appreciate your further consideration of our concerns and recommendations before the finalization of the Review.

If you wish to discuss the matters raised in this response further, please contact the undersigned, or GAMAA's representative in this area, Gareth Jennings. He can be reached at gareth.jennings@rheem.com.au or on 0423 792 334.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ross Jamieson', with a horizontal line extending to the right.

Ross Jamieson
President

1. Use of Australian Standards as a Safeguard against Potential Misuse of the Act

Whilst GMAAA has welcomed the recent bipartisan approach of government and industry towards developing new determinations, we remain concerned that the potential exists to return to the pre 2014 regulatory approach, with ideologically driven policy proposed by regulators or politicians, against the specific advice of industry.

Whilst not seeking to limit the ability of regulators and legislators to introduce policies they believe to be necessary, GMAAA proposes that the ongoing use of Australian Standards as the basis for all future determinations would offer a safeguard against poorly developed policy. The consensus based approach to developing Australian Standards ensures that a “best fit” with the interests of wide range of stakeholders is achieved. This consensus based “best fit” is an ideal solution to reaching agreement on contentious policy.

It must be noted that Standards Australia has a policy of adopting international standards where this is practicable. Many current Australian Standards are based on their international equivalents but have been reviewed by the relevant Standards Australia committees and amended as required to ensure compatibility with the local climate, energy supply parameters, building and installation practices and regulatory frameworks.

In contrast to GMAAA’s recommendation, the Draft Report seems to be recommending strategies that would allow an even more widespread and direct adoption of international standards, bypassing Australian Standards⁶. Many types of gas appliances are uniquely specified for the Australian market to suit the Australian climate, local gas supply infrastructure, building and installation practices, regulatory frameworks and consumer preferences. As a result, many gas water heaters, space heaters and gas cooking appliances, are locally designed and manufactured for the Australian market. Those that are supplied from overseas are uniquely specified for the Australian market.

As such, a continued reliance on Australian Standards is particularly necessary for gas appliances. Adopting an international standard for perceived expediency (or to achieve a step change in the industry) could result in a serious ‘mismatch’ with local practices and regulatory requirements and could put Australian investments and jobs at significant risk.

We therefore re-iterate our position that, to limit the worst excesses of previous GEMS regimes, the provision in the Act for the use of alternative standards should be eliminated and that the Standards Australia processes, and resulting Australian Standards, be acknowledged as the de facto basis for all future GEMS determinations. This recommendation is particularly applicable to locally designed and manufactured products.

⁶ Recommendations 31 and 32

In the case that this is not possible, and as a potential fallback, GAMAA believes that, at a bare minimum, the Act should clearly define a “trigger” that would justify a move away from Australian Standards as the basis for any Determination. This would at least provide industry with certainty as to whether an Australian Standards route, or an alternative solution route, was likely to be adopted given a particular set of circumstances

2. The Need for Guaranteed Notice Period Between Determination and Implementation

GAMAA’s April submission proposed that a minimum timeframe for the period between a Determination being issued, and it coming into force, be embedded in the Act. This recommendation has not been adopted, and instead it would appear that the current situation is deemed satisfactory, with merely an encouragement⁷ to the Regulator to consult on timelines included in the recommendations.

A lack of adequate lead time is a particular issue for local manufacturers of gas appliances who do not have worldwide suppliers of ‘finished goods’ from whom to seek alternative products. Instead, local producers must wait for the “black letter law” of a Determination to be issued before they can justify costly investments into product development, trials, retraining, certification and production line retooling.

With complex products such as those manufactured by our members, this process can sometimes require between two and three years of activity. As an example, the last significant change to water heater regulation in the US was announced in 2010, with an effective implementation date of April 16th, 2015. The five years between black letter law becoming available and the effective date of the regulation was then used by American manufacturers to develop new products to comply with the higher performance standards.

GAMAA would therefore recommend, again, that the review undertake comparisons with international energy efficiency initiatives to investigate the timelines that sophisticated manufacturing economies adopt in this regulatory space.

3. Changes to Workstream Priorities Assignment by COAG

GAMAA’s original concern related to GEMS Workstream decisions being made by COAG based on imperfect or flawed advice. Once a decision is made by COAG, it is almost impossible to reverse, leading to a significant waste of time, energy and resources of both Government and industry.

Given the difficulty in identifying a solution to this issue, and the political sensitivity associated with criticizing the decisions of Ministers or the advice of the Senior Council of Officials, GAMAA is not surprised that a recommendation regarding the problem is not included in the draft report.

⁷ Recommendation 8

A simple solution does however present itself, and would not require any legislative change to implement. This solution would require the SCO to consult with industry stakeholders (such as GAMAA) on their recommendations **prior** to COAG. This could be facilitated via an industry stakeholder session comprising representatives of the SCO and the industry representatives from the E3RC.

As a result, the SCO would be making recommendations to COAG on areas of investigation with a greater understanding of the practical issues associated with the recommendations. This solution has the additional benefit of avoiding costly investigations only to discover what was obvious to the industry prior to commencing the project.