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

By email: GEMSreview@environment.gov.au

Greenhouse and Energy Minimum Standards Act 2012 review

Dear Ms Collyer,

Thank you for the opportunity to review the Greenhouse and Energy Minimum Standards (GEMS) Act 2012 Discussion Paper. Ai Group has commented on those questions posed in the Paper of interest to our members. Ai Group also broadly supports the submissions from the Lighting Council of Australia (LCA), CESA and GAMAA.

Ai Group made a joint submission with the LCA and CESA in 2015 and a number of recommendations were made in relation to the Act. We will revisit these in this submission.

SUMMARY OF KEY COMMENTS

- Ai Group commends the current GEMS administration's commitment to a more collaborative approach to consulting and working with industry.
- Ai Group *supports* the GEMS scheme however we are concerned that the Department had not heeded the calls from industry on a number of issues including cost recovery, grandfathering and standards development.
- Cost recovery – Ai Group does not support 100% cost recovery as Government have benefited from costs savings accruing from reduced energy demand on electrical infrastructure.
- Alternative standards development - Ai Group hold concerns for the initiative to develop infrastructure for technical content for inclusion in Determinations. The Department has yet to demonstrate the ability to develop Determinations in a reasonable timeframe let alone taking on standards development capability. Ai Group argues that these resources would be better deployed to address the issues previously raised by industry.
- Compliance - Ai Group believes that the compliance activity by the GEMS regulator is abnormally low and that more resources are needed for surveillance and check testing.

Ai Group notes that awareness of the GEMS Act in the motor sector is very low and a more strategic approach to education is needed along with high profile prosecutions.

- Transition period – Ai Group recommends that the Act is changed so that a default transition period of 2 years is provided for with Ministerial power to vary it.
- Safeguards for the misuse of the Act – Ai Group supports calls from GAMAA for safeguards to be introduced against misuse of the Act. The use of Australia Standards is one example of one such a safeguard.
- Wholistic approach to energy regulation – Ai Group recognises that diminishing returns lay ahead of the MEPS regime and recommends that serious consideration is given by the Government to rethink product energy efficiency regulation.

We have listed below members issues in accordance with the headings on pg 8 of the Discussion Papers questions.

DETAILED COMMENTS

1. The proposed methodology for the review is outlined in section 1.3. Is there anything else the review should consider when assessing the performance of the GEMS Act?

Ai Group position

Ai Group is reasonably satisfied with the Review methodology outlined in Section 1.3.

2. What has been achieved through the GEMS Act?

Ai Group position

Given that the Act replaced a series of State and Territory Acts and regulations then its great strength is the national harmonisation of energy policy implementation in Australia.

The Paper makes much of the savings to consumers to the GEMS Act – at face value these are impressive however we note that there has been no independent evaluation of the figures however accepting them as written then Ai Group reiterates our point made in previous submissions that Government should not be seeking 100% cost recovery for the GEMS scheme from industry. We made the following statement in our 2015 submission:

The report quotes DoIS estimates that GEMS will have energy and greenhouse emissions savings of between \$3.3B and \$7.3B from 2014 to 2020. Industry recognises that Government utilities are a beneficiary of the GEMS scheme and these savings are reflected as a reduced need for capital investment in generation, transmission and distribution assets. Consumers also benefit from energy consumption savings as a result of improved equipment energy efficiency, For many products the consumer cost savings over the life of the product outweigh any initial increase in product price and the savings are greater when all or some of the product price increase is absorbed by the industry.

Also, the report estimates the cost impact on industry of the program of \$46.4 million annually and suggests these costs are passed on to consumers. Industry suggests that in reality these costs are sometimes absorbed by businesses and this is resulting in reduced margins and decisions as to whether to maintain some products for sale in Australia. Some of our members are reporting that they are now removing products from the Australian market based, in part, on the compliance costs of the GEMS Scheme making such lines unprofitable. Any further increase in fees would mean less consumer choice. On this basis Industry believes that a 50/50 cost recovery is equitable.

Industry recommends that the Government considers a more equitable arrangement with cost recovery share 50/50 between Government and industry.

To date Government has ignored this recommendation notwithstanding the commitment to reduce regulatory burden on industry.

Ai Group recommends that Government revisit the policy of 100% cost recovery on industry and recognise that it has benefited from costs savings GEMS regime and should also bear some of the costs.

3. What are the Act's strengths and weaknesses?

Ai Group position

Strengths

Given that the Act has consolidated a multi-jurisdictional scheme, the key strength is the national harmonisation in energy policy implementation that has affected in Australia.

Weaknesses

i. Compliance activity

Ai Group notes that in the "GEMS Act Compliance: Check Testing Results July to December 2017" that only one test had been conducted on electrical rotating machines. This sends a message to unscrupulous operators in the market that the GEMS regulator is not serious with enforcement. We also note that it has been reported that up to 50% of all motors imported into Australia may be bypassing the GEMS scheme as they arrive as part of a system that is difficult to track and audit.

The compliance report indicates that a total of 45 check tests had been performed over a 6-month period. This is unacceptably low given that Ai Group understands that the total number of products on the register numbers in the tens of thousands.

Ai Group, in our 2015 joint submission with CESA and the LCA, titled "Comments on the Greenhouse and Energy Minimum Standards (GEMS) Review Report made the following recommendation:

Industry recommends that Government ensures that surveillance and enforcement activities of GEMS is well resourced and that there is reporting to stakeholders of the effectiveness and efficiency of the conformance framework. Industry encourages

further engagement and information sharing with the compliance team with the aim to make compliance activity more visible and efficient. Development work on both sides is encouraged and improvements in the above areas is possible.

The most recent compliance report unfortunately indicates that there has been no apparent change in resourcing of surveillance activities.

Reinforcing this problem is the lack of awareness on some sectors, specifically 3 phase motors, of the GEMS Act. One of Ai Group members reported that:

Knowledge of the GEMS Act, even within large and sophisticated companies, is relatively low. We are a third tier supplier on the project in question and we found ourselves highlighting this as an issue to the principle contractor. It was clear that our overseas competition were neither aware of the requirement, or had complied with the requirement at the tender stage.

Ai Group also believes that a lack of high profile prosecutions can create a perception that the Act does not have any “teeth” and therefore is not taken seriously.

Ai Group recommends that the GEMS regime increase the resources made available for surveillance and check testing.

ii. Tolerances

As argued by the LCA, GEMS determinations do not include an appropriate tolerance allowance on check test results. The LCA has also provided data to illustrate the variability in laboratory testing. The LCA also refers to the EU Directive that does allow for tolerance on check test results.

Ai Group recommends that the GEMS regime provide for reasonable tolerances when testing is undertaken.

4. How could the operation of the GEMS Act be improved?

The focus of the Act are products many of which are used by consumers in the home. As much is made in the Paper of the savings being made by consumers then the Review may like to consider a more holistic approach to energy efficiency by considering the energy consumption and use of the entire household. This would entail an entirely new approach to energy regulation that would need extensive engagement and discussion with industry and consumer to develop a workable regulatory model.

Ai Group supports the statement from GAMAA's submission:

The current GEMS Act requires regulators to implement and enforce what is a 20th century regulatory approach (bans and minimum appliance standards), whereas the emerging energy efficiency opportunity lies with a whole of house approach to the issue. The emergence of energy network and 3rd party home energy management providers (eg Reposit) offering remote management of distributed generation (PV and batteries) and smart appliances are game changing events. New technology

can be harnessed to ensure that appliances utilise renewable energy where available, or limit grid usage to those periods of least demand and lowest cost.

A shift in the Act's focus to promoting this 21st century opportunity, rather than trying to gain minor efficiency improvements in single appliance categories, is likely to achieve significant grid energy savings, lower running costs and lower greenhouse gas emissions. GAMAA believes that this approach would also result in a better use of the resources that are currently being dedicated to appliance regulation.

Ai Group recommends that over the life of the next GEMS Act that Government give consideration to a holistic approach to achieving energy efficiency.

a. Are the actions taken following the 2015 GEMS Review leading to better outcomes?

Ai Group position

In reviewing Ai Group's joint 2015 submission a total of 8 recommendations were made:

- i. *Industry does not accept that 12 months is an acceptable time (even as a default) to implement a Determination and recommends that broad industry consultation is made using the mechanism of the Consultation RIS to ascertain an equitable time period.*
- ii. *Industry recommends that standards that form the basis of GEMS Determination ONLY be used from organisations meeting the above criteria and that these standards be published prior to the issuance of the Consultation RIS.*
- iii. *For greater certainty, industry recommends that grandfathering be a discussion point in each Consultation RIS and costing should be factored into cost benefit calculations if there is a proposal to limit grandfathering.*
- iv. *Industry suggests the report should include a recommendation to clarify and finalise the definitions of each product family and this should be a part of the future funding review. The report should also include the principle that cost should be applied equitably across the regulated product categories.*
- v. *Industry recommends that the Government considers a more equitable arrangement with cost recovery share 50/50 between Government and industry.*
- vi. *Industry recommends that Government corroborate estimates of energy savings with actual national trends in energy consumption and real use by consumers when preparing cost benefit analyses.*
- vii. *Industry recommends that the cost and timing elements in the Consultative RIS take into account costs unique to local manufacturers to comply with changes.*
- viii. *Industry recommends that Government ensures that surveillance and enforcement activities of GEMS is well resourced and that there is reporting to stakeholders of*

the effectiveness and efficiency of the conformance framework. Industry encourages further engagement and information sharing with the compliance team with the aim to make compliance activity more visible and efficient. Development work on both sides is encouraged and improvements in the above areas is possible.

Disappointingly Ai Group has observed that few of these recommendations have been taken up and therefore finds it difficult to identify meaningful outcomes from the 2015 GEMS Review.

5. What are the emerging opportunities and challenges for product energy efficiency?

Ai Group position

The key issue that the Government faces is that much of the low hanging fruit has been picked in terms of new products. Continually moving the MEPS levels higher will encounter diminishing returns compared to the cost burden on industry. The Government needs to rethink the approach to MEPS and consider an alternative.

- a. Are the appropriate products covered by the current GEMS regulations?**
- b. Are the priority product categories the correct areas to be targeting?**

Ai Group position

Ai Group considers that the product range covered by GEMS is adequate however we believe that in the case of energy transformation devices such as 3 phase motors and transformers greater attention should be made to the loads that these devices supply. Typically, both devices achieve efficiencies greater than 95% so logic dictates that the focus should be made on the energy efficiency on the load systems.

6. What are the opportunities and challenges associated with the development of GEMS determinations?

- a. Does the current framework support the appropriate balance of being responsive to innovation and consulting adequately before introducing new or updated regulations?**

Ai Group position

Ai Group does not believe that the existing GEMS framework is conducive to encouraging innovation mainly due excessive lead times in some cases as much as 4 years for the development of determinations. Industry needs regulatory certainty in order to invest and innovate. The GEMS regulator has had historically a chequered record with industry on consultation however we are seeing strong desire with the current administration to ensure that they at least talk and listen to industry during regulatory processes.

b. Is the GEMS determinations process adequate in terms of the consultation process and the timeline?

Ai Group position

As mentioned above, Determination development time cycles are inconsistent and in many cases excessive. Ai Group has welcomed disclosure of the draft Determinations to stakeholders to assist in development as has been the case with 3 phase motors and refrigerators.

As discussed elsewhere Ai Group does not support the establishment of technical content development capability by the GEMS regulator as an alternative to Standards Australia's processes.

c. What issues would need to be taken into account in considering a decision to remove a GEMS determination?

Ai Group position

Ai Group believes that Determinations should automatically expire after a period of 5 years unless a case can be made by policy makers that the original cost/benefit is still valid. Leaving a determination in place without at least a review of cost/benefit is akin to placing regulatory burden on industry by stealth as the benefits reduce over time but costs remain the same.

The Paper makes the statement that "*If costs of regulation were outweighing the benefits, a policy decision could be taken to remove a GEMS determination*". Ai Group believes that only a sunset clause within the Act will trigger the necessary review to ascertain if benefit still outweighs cost.

7. What are the opportunities and challenges associated with the registration of GEMS products?

a. Is the balance between flexibility and risk set at the appropriate point for family registrations where a large number of models are allowed in the family?

Ai Group position

Ai Group believes that the balance between flexibility and risk are acceptable. We do note that members have called for more guidance from the Department on establishing families of models and the associated risks.

b. Are there improvements that should be made to the GEMS registration system (in addition to those summarised in Box 4)?

Ai Group position

Ai Group members have not advised of any additional improvements and welcome the initiatives outlined in the Discussion Paper.

c. Are there changes that could be made which would make the link between the model number provided at registration and the product offered in the market more clear?

Ai Group position

No comment

d. Is there a more practical point for the registration obligation to be triggered for customised products, which would still provide some assurance for consumers at the point they make the purchasing decision that the product meets MEPS requirements?

Ai Group position

No comment

e. What are the pros and cons of seeking to harmonise the GEMS registration system?

Ai Group position

Whilst in principle the harmonisation of the GEMS registration system with the ACMA RCM mark is attractive, members do not support it at this time.

f. Are the grandfathering provisions under the GEMS Act appropriate?

Ai Group position

Ai Group notes CESA's submission distinguishes between a **transition** period and a **grandfathering** period.

*A **transition period** was intended to provide suppliers with sufficient time to change product designs to meet new requirements specified in a determination.*

...

*A **grandfathering period** is to give suppliers time to sell out non-compliant stock, or stock which may be compliant but the model is not continuing so will not be registered. In most cases the determination has not limited the grandfathering period, as allowed by the Act, because of the unlikely prospect of stockpiling models prior to a determination application date, stockpiling being uneconomical in the majority of cases.*

Ai Group regards the transition provisions (12 months) of the Act as inadequate. Manufacturers and suppliers need regulatory certainty to enable investment decisions to be made. CESA in their submissions goes onto make the following point:

The Act default period (for transitions) is 12 months, which in many cases is too short. Manufacturers have repeatedly requested 3 years for major design changes and at least 18 months for minor changes. It is not sufficient for a department to say

that manufacturers have known about the proposed changes for some time prior to the determination. Manufacturers will not commence to look at design changes until there is certainty about what will be required. We do not get this certainty until the Minister actually signs the determination.

Ai Group supports CESA's call for a transition period to be reviewed during the Consultation RIS noting that our preference is for a minimum of 2 years.

Given that the life cycle is quite short for lighting product then changes to the Act should be considered to address the following issue:

- Lighting product is registered for and is compliant with the relevant Minimum Energy Performance Standard (MEPS).
- The MEPS is updated at the same time the manufacturer makes the product superseded.
- This means that the product cannot be upgraded to comply with the latest MEPS hence it cannot be re-registered.
- In this situation there will be product in the supply chain (having been sold by manufacturers/importers to retailers/wholesalers as compliant and that has been registered) held by wholesaler/retailers that cannot now be sold hence they will return it to the manufacturer/importer as unsold stock.

Ai Group recommends that the Act is modified to allow grandfathering (to be sold out) for product where:

- i. registration has expired;
- ii. the product is in run out mode;
- iii. the product has been sold by the manufacturer/importer ("first sale") and
- iii. it is not feasible to upgrade to the new MEPS (to allow re-registration)

Ai Group notes that this is in line with the grandfathering provisions which are in the EESS scheme for sell-out of discontinued products.

8. What are the opportunities and challenges associated with compliance and testing activities?

a. Is the current compliance regime delivering effective outcomes?

Ai Group position

Ai Group believes the surveillance and check testing activities are under-resourced and hence the regime is not delivering effective outcomes. Ai Group has long argued that a portion of electrical motors imported as part of a system are escaping the GEMS regime. The regulator needs to make high profile prosecutions to send a signal to the market that there are consequences for breaching the GEMS Act – only then will importers start taking note of it.

b. Is the two-stage check testing process the most appropriate approach for all GEMS products?

Ai Group position

Ai Group supports the two-stage check testing approach used by the GEMS regulator.

9. What specific issues arise in relation to the aspects of the GEMS program, and potential expansions of the GEMS program, as described in section 7 of this paper?

Ai Group position

Ai Group supports the potential to expand GEMS using a systems approach.

10 Is there anything that can be learned from other jurisdictions in relation to product energy efficiency regulation that is relevant to this review?

Ai Group position

No comment

11. Are there any issues not mentioned in this Discussion Paper that should be considered in the review?

Ai Group position

See items below from 12 onwards.

ISSUES NOT COVERED IN THE DISCUSSION PAPER

12. Determination process – establishment of alternative technical content infrastructure.

Ai Group position

The Paper states that “*some industry stakeholders have expressed concern about the potential lack of clear obligations around consultation where regulation is progressed through a GEMS determination directly, rather than through the standards process*”. Ai Group notes that the majority of industry bodies including CESA, Lighting Council, AREMA, GAMAA and Manufacturing Australia hold these concerns. It is disappointing that the Department is fixated in pursuing this initiative when it is opposed by the majority of industry.

Ai Group in our submission “*Alternative Approach to implementing MEPS and Labelling*” made the following points

- *Ai Group does not support the development of additional infrastructure to develop technical content **unless** it is underpinned by the principles in ISO/IEC Guide*

59:1994 Code of good as practice for standardization as reflected in Standards Australia's accreditation criteria

- *Ai Group has reviewed the Departments documents that outline how technical content will be developed and whilst the processes do emulate many of SA's protocols, they fall short in fully satisfying the principles of consensus, balance and transparency.*
- *The Department must articulate a set of decision criteria that determine when the alternative infrastructure for technical content development should be triggered. Ai Group suggests that the default position should be the utilisation of SA standards development infrastructure for the development of technical content and only the alternative be used in circumstances where:*
 - *SA does not have the resources to deliver a project in a realistic timeline;*
 - *the Department can demonstrate that alternative technical content development infrastructure will be more cost effective and realistic timelines; and*
 - *where there is agreement with industry.*
- *Ai Group recommends that 2-year transition periods are the default time period for all future Determinations.*
- *Ai Group recommends that the Department reengage with Standards Australia to review their current performance particularly time to market. If the Department has concerns with the performance of SA then this should be reflected by requesting that Federal Government make changes to the MOU (that is set for review in 2018).*

Ai Group is concerned that the Department is establishing alternative technical infrastructure that will allow it to pursue objectives that do not necessarily align with the interests of all stakeholders that would be otherwise achieved using SA infrastructure.

One of the issues used by the Department in justifying the development of alternative standards is that the time to market of Australian Standards development is excessive. This is not always the case. Consider the following example regarding the review of *Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination ('the Determination')* and *AS/NZS 4474 Household refrigerating appliances - Energy labelling and minimum energy performance standards requirements ('the Standard')*.

- In July 2013 the Department advised that new refrigerator MEPs and labelling would be implemented and commenced the RIS process, which was completed in November 2017
- Noting that the determination and/or standard process is dependent on the RIS, the revision to the Standard by SA commenced within one month and is on track to be published by December 2018

The duration to implement new MEPS will be more than five years. The Standard process including consensus with Public Comment will be completed within one year. This cannot be considered as slow when taken in context of the entire process

As stated in our recent submission

“Ai Group does not believe sufficient evidence has been provided by the Commonwealth Government to justify a move away from the current Standards Australia process in developing GEMS determinations nor do we think that the processes outlined provide the equivalent robustness of that provided by SA.”

We still hold to this view.

13. Safeguards for misuse of the Act

Ai Group supports GAMAA’s call for safeguards to be introduced into the Act against misuse use. GAMAA submission states that:

The last 4 years have seen a more co-operative GEMS approach between industry, regulators and the government, however this contrasts starkly with the situation that existed between 2007 and 2014.

...

Our concern lies in the fact that nothing in the Act has materially changed between these two periods, apart from the approach of the Regulator and the Minister towards GEMS, and that there is nothing in place to prohibit a return to the regulatory excesses that were previously experienced.

One of the few potential safeguards against such excesses is the ongoing use of Australian Standards as the basis for determinations. Australian Standards are developed as a result of a consensus process achieved across a wide range of stakeholders. They represent a middle ground that all parties can accept. In contrast, the current Act includes a provision allowing the use of “alternate standards” in drafting determinations. In theory this allows the regulator and/or the Minister to merely consult on these alternative standards, and they can choose to ignore the recommendations of key stakeholders if they so wish.

Ai Group strongly supports the argument that the use of Standards Australia’s processes is one safeguard to ensure the interest of all stakeholders is preserved during Determination development.

14. Previously non-regulated models prior to a determination enactment

Ai Group supports CESA’s position in relation to recent interpretations by the Department of the Act to situations where non-regulated models already in the country prior to a Determination becoming enacted. CESA has stated in their submission:

The interpretation states that models that comply with the determination requirements, are required to be registered against the determination to continue to be sold. This requires all models to be tested to see if they comply or not. This places an unnecessary regulatory burden on suppliers to test models, which did not require testing in the past. The perverse outcome is that if the model does not comply, then that model may continue to be sold, without registration, until stock is exhausted. However if a model is found to comply, then that model must be registered. It creates an incentive for suppliers to ensure they supply non-compliant

models when they become aware that models will be covered by a determination in the future. This incentive could actually result in an increase in greenhouse gas emissions, which appears to be at odds with the GEMS Act purpose of reducing emissions.

Ai Group recommends that the Act is changed to remove this interpretation to make it clear that all previously non-regulated models in the country prior to the Determinations' application date, whether they comply or not with the determination requirements, may continue to be sold without registration until stock is exhausted.

We welcome the opportunity to discuss any element of this submission with you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J Thomson', written in a cursive style.

James Thomson
Senior Adviser Standards and Regulation