

21 December 2018



Ms Anna Collyer
GEMS Act Review Team
Appliance and Building Energy Efficiency Branch
Department of the Environment and Energy
GPO Box 787, Canberra, ACT, 2601, Australia
By email: GemsReview@environment.gov.au

Dear Ms Collyer

Lighting Council Australia (LCA) welcomes the opportunity to provide comment on the Draft Report released by your GEMS Act Review Team in November 2018.

LCA's response to the Draft Report is based on consultation with the lighting luminaire and lamp supply industry.

LCA agrees with many of the recommendations contained in the draft report. We also feel there are areas of the draft report that should be strengthened particularly in relation to the relevance of the GEMS Act to the current lighting market, the poor consultation approach and lack of commercial consideration displayed by some policy developers in the Department of the Environment and Energy, the uncertainty of the current standards and determinations development approach, product registration, compliance and the approach to check testing tolerances.

Many of the above issues are expanded upon overleaf.

We look forward to the final draft report and Government's response.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D. Crossley", with a horizontal line extending to the right.

David Crossley
Technical Manager
Lighting Council Australia

Lighting Council Australia – Response to the GEMS Act review draft report November 2018

Lighting Council Australia support

Lighting Council Australia supports the following recommendations contained in the draft report:

- LCA agrees with the Draft report recommendation 1 that recommends the Commonwealth Government develop a long-term strategic plan for energy efficiency including the complementary programs listed in Appendix C.

There are currently at least seven Commonwealth and state government energy efficiency programs, schemes and codes aimed at lighting products including different regulatory requirements, product requirements and registration systems. The regulatory duplication and lack of harmony in energy efficiency policy, regulation and standards development could best be described as chaotic, at best, and is a clear demonstration of the lack of leadership, coordination and harmonisation displayed by all governments in this area.

Considerable productivity gains and reduction in consumer costs could be achieved through rationalisation and alignment of the various programs.

- LCA agrees the GEMS Act should be amended to require registration at the point when a sale is confirmed instead of the current arrangements requiring registration when a product is offered for sale (i.e. recommendation 12)

LCA further highlights it is un-commercial to require low volume bespoke products to be tested and registered at considerable cost when this cost may exceed any profit made during a sale. Such requirements will simply remove large numbers of otherwise compliant products from the high-quality specification market and decrease consumer choice.

- LCA commends the draft report recommendations proposing joint registration arrangements, a single registration portal and examination of further streamlining opportunities to ease the compliance burden on industry (i.e. recommendations 13, 14 and 15).
- LCA agrees with draft report recommendation 16 which suggests extending the grandfathering provisions that currently apply to non-compliant products imported before a determination is implemented to compliant products imported before a determination is implemented.
- LCA agrees that additional GEMs compliance resources and further efficiencies should be pursued (i.e. recommendations 17 and 18).
- LCA agrees that further collaboration between the GEMs Regulator and other stakeholders should continue to explore new ways to target compliance (i.e. recommendation 19)
- LCA agrees further work be undertaken to explore faster check testing and enforcement processes (i.e. recommendations 20 and 21). An improved approach is needed before the LED market is regulated.
- LCA agrees COAG Energy Council should explore both voluntary and mandatory measures when developing new or enhanced regulations (i.e. recommendation 22). We further

highlight that some market areas such as street lighting already take a voluntary approach and this is regarded as successful due to the educated customer base comprising lighting designers/specifiers, road engineers and electricity network engineers.

- LCA agrees with the Draft Report recommendation number 22 including consideration of voluntary (and mandatory) measures when developing new or enhanced regulations.
- LCA agrees with the Draft Report recommendation that the COAG Energy Council continue to engage in education to promote energy efficient behaviours.
- Lighting Council Australia agrees with recommendations 25 and 26 regarding the commissioning of an independent assessment and audit of the benefits, modelling and methodology used in the calculation of GEMS costs and benefits.
- LCA agrees international standards should be monitored and standards appropriate for Australia should be proposed for adoption in Australia (i.e. recommendation 31). This approach is particularly relevant in markets where the majority of products are imported and existing Australian standards are based on international standards.
- LCA agrees there should be harmonisation and coordination between appliance and building energy efficiency regulations.

Lighting Council Australia suggests strengthening the final report

Lighting Council Australia would like to see the draft report strengthened in the following areas.

Draft report should address the poor attitude displayed by some Departmental staff

The draft report is inconsistent in its approach to the topics surrounding energy efficiency regulation. For example, the draft report makes comments and recommendations in some areas that are not able to be affected by the GEMS Act itself (i.e. strategic direction, RIS processes and consultation processes) yet does not highlight a major area of concern for many industry stakeholders – the poor attitude displayed by some Department staff during consultation processes.

LCA agrees the report should include comment on all areas relevant to energy efficiency regulation in Australia as the GEMS Act and E3 program do not exist in isolation. LCA submits the draft report should also mention the poor attitude displayed by some Departmental staff as this is a major issue affecting the development GEMS determinations and policy directions (as conveyed at a meeting between the GEMS Act review team and industry stakeholders held in early June 2018 and by several industry stakeholders during first round submissions).

At the June 2018 meeting, industry stakeholders conveyed their views that an unbiased view should be the starting point for discussions regarding new regulatory proposals. Ideologically driven policy development within the Department of Environment and Energy should not continue to be tolerated.

LCA would like to see the report strengthened to particularly highlight that the Commonwealth Government should address the dismissive and biased attitude displayed by Department staff that favours unwarranted regulation and unique Australian standards in markets that do not display market failures. Such approaches increase consumer costs, retard the energy efficiency of markets and create technical barriers to trade.

As an example, the recent LED MEPS policy development process slated a wide scope of LED products for regulation and proposed unique and extensive Australian product standards before senior Department staff and the Minister intervened to re-direct the policy development process towards a more reasonable and sensible path. The LED MEPS proposals initially favoured by some Departmental policy development staff included unworkable and uncommercial proposals and very high compliance costs including little (if any) benefits.

There has been considerable cost, energy and angst involved in the LED MEPS development process so far for industry stakeholders. This has occurred in a market area that has evolved quickly towards highly efficient, quality products and where very little (if-any) market failure has been demonstrated. The LED market is currently operating without any GEMS Regulations and is an example of effective market behaviour that does not display a need for high cost (if any) regulation.

LCA would prefer that such a biased policy development process not occur in future and we recommend that the Commonwealth Government should identify opportunities to address the ideological and poor attitudes displayed by some Departmental staff. This recommendation aligns

with the COAG principle regarding evaluation and review of consultation processes with a view to increasing the effectiveness of policy development.

Standards and determinations development processes

Section 5.2.3 of the Draft Report seems to favour the AREMA view regarding standards development and places a significant reliance on the COAG RIS process to conclude that the status quo should remain (i.e. that the standards development pathway should be determined via consultation). This conclusion relies heavily on a fair and balanced consultation and RIS process and does not acknowledge historical consultation failures and bias exhibited by Departmental staff.

The Draft Report acknowledges the need for all stakeholders to have the opportunity to comment on their preferred standards development pathway via consultation. However, LCA highlights there can be a big difference in outcomes between a consultation approach that favours regulation compared with neutral consultation that objectively considers and includes comments without bias or favour.

LCA agrees with Draft Report recommendation 6 that proposes the Commonwealth Government work closely with Standards Australia on how the GEMS determinations and Standards Australia processes could be mutually improved.

Further LCA suggests an alternative approach to standards development that would provide more certainty for all stakeholders would be a recommendation to favour the Standards Australia process as the default position unless an alternative standards development process is favoured by all stakeholders.

Such an approach would provide greater certainty to stakeholders, due to the fact that the trusted¹ Standards Australia process would normally occur, and also allow for flexibility when all stakeholders request that an alternative standards development process is needed (i.e. this approach includes the flexibility requested by AREMA and Standards Australia).

Unsubstantiated claims regarding the benefits of the GEMS Act

LCA notes the narrative of the draft report is highly favourable regarding the operation and contribution of the GEMS Act towards energy efficiency improvements in Australia.

LCA highlights the following points:

- The benefits of the GEMS Act have not been independently substantiated and would likely be significantly lower than forecast by the Department of Environment and Energy. Any benefits should be determined based on a comparison with the counterfactual position (e.g. no GEMS Act) rather than comparison with the pre-GEMS period. LCA suggests that other market forces besides the GEMS Act would likely be achieving the bulk of energy savings being achieved.

¹ This trust is demonstrated via a MOU between the Commonwealth Government and Standards Australia signed on 17 May 2013. Further, Standards Australia's processes are audited to comply with standards development organisation requirements.

- Technological developments (e.g. LED lighting product developments), industry innovations (e.g. product miniaturisation and automation) and other market forces such as increasing energy prices are enabling and driving the majority of energy efficiency gains in the Australian lighting market.
- The increased costs to consumers due to the compliance costs under the GEMS Act are likely to be significantly greater than forecast by the Department. LCA notes RIS processes have only made comparisons between pre-MEPS and post-MEPS prices and not regarding the counterfactual business-as-usual case whereby consumer pricing has been consistently falling.
- The benefits to energy efficiency in Australia due to international energy efficiency regulations are likely to be significant yet are not acknowledged. Even though manufacturing country export arrangements are not subject to in-country regulations, Australia would be benefitting from other market regulations due to the rising tide effect combined with the fact that it is not economically viable for Australian specific products to be developed.

The Australian Government National Waste Policy takes this type of approach regarding the reduction of hazardous substances (RoHS) such as lead and poly-brominated flame retardants. Major manufacturing countries have ROHS regulations. However, Australia does not.

- The lighting example in box 2 comparing the cost of running halogen lighting with the cost of running LED lighting (e.g. \$2300 saving over 10 years) is misleading and does not acknowledge the fact that the lamps installed and used in most households are currently a mix of halogen, compact fluorescent lamps (CFLs) and LED with the transition towards majority LED lamps installed being well underway.

This example also fails to acknowledge that the lighting market is quickly transitioning away from the least efficient products quite effectively without MEPS regulatory intervention. This is evidenced most obviously through examination of the retail shelf space dedicated to the various product types. LEDs products occupy the vast majority of retail shelf space and CFLs and halogen lamps are quickly fading from the market.

LCA further forecasts that retailers will soon start to voluntarily remove halogen and CFL products from their stocks due to the decreasing economic viability of these products.

LCA suggests the draft report be amended to include greater acknowledgement of the above points and less weight on benefits due to the GEMS Act, particularly given the lack of independent assessment of the GEMS Act and program. This point is also relevant to the data analysis section and recommendations 25 and 26.

Lighting Council Australia considers regulatory risk as a major ongoing and growing challenge for the sector. The lighting market will continue to innovate and provide increasingly higher quality products to consumers. This is occurring despite—not because of—additional regulation. The GEMS Regulator must adopt soft-touch regulation in order to prevent the stifling of innovation and the

reduction of consumer choice. The failure to do so does not accord with the Government's express guidance to government policymakers on the development of policy (see e.g., The Australian Government Guide to Regulation).

Removal of GEMS determinations

Regarding the removal of GEMS determinations LCA suggests the draft report be strengthened to include a recommendation to provide guidance regarding when GEMS determinations are no longer effective and recommended to be removed. For example, where markets are voluntarily and significantly improving in efficiency and old technology products are quickly declining in market share, there is not a convincing case to retain historical MEPS determinations. This situation currently exists in the lighting market, yet we are not aware of the removal or any proposal to remove GEMS determinations on lighting products.

We also highlight the GEMS Regulator has a financial interest in retaining GEMS determinations and recommend the decision to remove a determination be undertaken by an independent agency such as the Office of Best Practice Regulation (OBPR).

Registrations

LCA agrees that significant reform of the GEMS Act is required regarding product registration. However, we do not agree with some of the assumptions outlined in the draft report.

The statement that Australia's registration system and the GEMS registration database are highly regarded within the international community is not based on any assessment of global industry views. We understand that Lighting Europe, the peak industry body representing lighting suppliers and associations in Europe, takes an opposing view point and is highly concerned regarding the likely increase in regulatory burden that a European registration system will bring.

LCA questions the modelling behind the source of claimed compliance rate improvements (i.e. footnote 16) and the overall benefits of a registrations system. The modelling work undertaken by the European Commission does not include an overall assessment of the full costs of a registration system and LCA contends that such registration systems are increasing consumer costs beyond any benefit achieved.

LCA also highlights there are other methods by which the regulator could educate suppliers regarding regulatory requirements. Other regulators such as the Australian Communications and Media Authority (ACMA) require product suppliers to compile an auditable technical construction folder including a signed declaration of conformity before they label a product.

The GEMS Regulator currently has the ability to identify (through Australian Customs and Bureau of Statistics tariff codes as well as Australian Tax Office information) every lighting product importer/supplier and educate them regarding the requirements of the GEMS Act. Up until this point the GEMS Regulator has not chosen to undertake actions that would increase regulatory awareness and compliance rates.

LCA also questions the inclusion in the draft report of the statement that product registration continues to provide consumers with important additional information². This may be the case for high cost consumer items. However, it is highly questionable that consumers undertake research using the GEMS registration database for relatively inexpensive commodity products such as light bulbs they routinely purchase from supermarkets and hardware retailers. LCA suggests the draft report should be amended to acknowledge this point.

LCA agrees more work should be done to explore the opportunities for supplier level registrations and further submits that recognition of industry led third party schemes such as membership of a peak industry body (including an agreement to comply with the relevant industry code of conduct) should also be considered as one of a number of possible registration options available. The current limited arrangements available in the GEMS Act (i.e. those identified in Table 4 of the draft report) pose either high cost, high risk or lack certainty for industries where large numbers of model variants and high model turn-over exists.

Lighting Council Australia notes that high pre-market registration costs reduce the incentive for suppliers to upgrade products. This has the effect of impeding the natural progression of product improvements. Where a product has been registered, a supplier has an incentive to continue to amortise the cost of that registration over additional sales volume rather than face additional costs in registering a new product type.

LED lighting products are upgraded at a rate possibly unmatched by any other product type under the GEMS regulations, with discrete advances occurring every six months or so and sometimes more frequently.

The effect of the pre-market registration is to distort the market into providing lower quality lighting equipment. The consequence of this is to retard the adoption of market-leading and highest efficiency technology, reducing the gains achievable by consumers. This should be of particular concern noting the aim of the GEMS Act to address third party effects arising from excessive energy consumption.

LCA does not agree with the draft report's view that "registration requirements are an essential and effective part of a holistic compliance regime"³. Registration exists to both raise GEMS funding revenue, increase compliance rates and provide consumers with information. However, regarding the lighting market, LCA suggests there are more efficient ways to achieve these aims (as outlined above and below).

As below, LCA suggests that the compliance approach should focus more on post market activities and less on pre-market aspects. LCA also suggests that other methods of raising revenue should be explored besides fees raised via model registrations.

If product registration is maintained at all, then this should:

- Not include a registration fee;

² Draft report page 45.

³ Draft report section 5.4.2 GEMS Compliance resourcing

- Require only basic product information such as model numbers and basic product information; and
- Make provision for the voluntary uploading of product conformance information.

The GEMS Act should be amended to allow for an EU-style supplier conformity declaration approach. The costs faced by industry would be considerably lower where suppliers are able to meet the requirements of the legislation by holding technical construction files for their products (such as product design information, component specifications, benchmark test results, and quality assurance processes). The registration system should allow for the voluntary uploading of this data at product registration - should a product registration requirement be maintained.

LCA would like to see the draft report strengthened to include the above points.

GEMs product unique identifiers

LCA suggests that recommendation 11 will be difficult to pursue for the regulated lighting market as the vast majority of regulated lighting products are internationally traded goods and a unique GEMS identifier would involve very high compliance costs or would remove significant numbers of otherwise compliant lighting products from the market due to manufacturers refusing to add a unique GEMS identifier.

Compliance

LCA suggests the draft report should include a recommendation regarding an assessment of the impact of non-conforming products and in particular a detailed analysis of the rates of registered product non-conformance and unregistered product non-conformance.

Non-conforming products may be both registered or unregistered. Registered non-conforming products may be erroneously or fraudulently registered under the GEMS Act or later manufactured at lower standards. Unregistered non-conforming products are sold outside the parameters of the GEMS regulations.

As suggested above (see registrations section) all lighting product importers/suppliers are currently able to be identified and educated regarding GEMS compliance. LCA suggests that identification, education and auditing of all suppliers/importers would be more effective than requiring suppliers to undertake the current pre-market registration of all models.

From a compliance perspective the GEMS Regulator could calibrate their compliance approach depending on the reaction of businesses to the initial approach and any requests for information undertaken by the regulator. LCA highlights there would likely be tens and possibly hundreds of new lighting equipment suppliers in Australia who are currently unaware of the GEMS Act and GEMS Regulator.

LCA noted during the GEMS fees review that the majority of GEMS revenue is consumed during the assessment and registration phase (i.e. assessing test reports and maintenance of the registration system) and that only a minority of revenue raised is consumed during post market compliance activity. Given the lack of awareness of the GEMS Act and GEMS Regulator amongst lighting industry

participants, LCA suggests GEMS revenue would be better spent on post market compliance activity rather than the pre-market assessment activities.

LCA further highlights that LED lamps will likely be regulated under GEMS in 2020 or 2021. This market is characterised by a high number of models and rapid turn-over and re-development of models. Each model may only exist on the market for six to ten months before being upgraded. It will be imperative that the GEMS Regulator is able to effectively deal with non-compliant products in such a dynamic market via a rapid response compliance approach to this market.

Previous approaches that have taken up to three years to complete the audit testing of compact fluorescent products will not be effective for the LED lamp market.

Testing tolerance and sampling methodology

LCA suggests the GEMS Review report should include a recommendation to explore a similar tolerance and test sampling approach to that taken by the European Commission. If we are to increase our adoption of international standards, our regulations should similarly be aligned regarding tolerance allowances and test sampling.

Such alignment would have the effect of reducing technical barriers to trade and also have the effect of clearing up the debate regarding whether Australian appliance efficiency levels are lower than other major markets such as the EU.

The EU Directive allows for a significant tolerance on check test results. This is an acknowledgment that test laboratories have variation between their test results and it is fair and reasonable to include a tolerance to accommodate for this variation. Also, the EU approach to lighting audit testing is to test 10 samples and take the average mean as the test result. This approach acknowledges that different samples of the same product model will have different performance due to variation between the components that make up those products.

Data collection

Regarding the proposed submission of market sales and import data by industry participants - LCA is opposed to any increase in compliance costs due to the GEMS Act. As well as being an additional significant burden and grossly intrusive into commercially sensitive areas, such a move would likely increase the rates of market non-compliance due to companies wishing to avoid the high compliance costs associated with the GEMS Act. LCA does not agree with the inclusion of recommendations 23 and 24.

LCA suggests that the draft report include a recommendation for the regulator to seek market data by other means including the purchase of Australian Bureau of Statistics (ABS) statistical information associated with import and export data. Such an approach should be highly accurate in markets where all products are imported (e.g. LED lamps, halogen lamps, CFLs). LCA also understands this ABS information is able to include the contact details of all product importers which would provide the regulator with improved effectiveness regarding market compliance, audit and education.

Alternatively, the GEMS Regulator could survey the market and homes to determine the products being sold and installed in homes.

International Standards participation

The draft report outlines many forums where international standards development is taking place. LCA agrees in principle that international standards development and Australian industry participation in such international developments would be positive for Australia. However, we caution that some of the organisations listed in the draft report are not well regarded due to their exclusion of industry participants.

For example, the International Energy Agency Energy Efficient End-use Equipment (4E) is a forum for international regulators that is not well regarded by Australian and international industry groups due to the uncommercial nature of the standards and specifications developed.

LCA would support standards development within organisations such as the International Electrotechnical Commission (IEC) and via the usual Standards Australia mirroring process.

LCA suggests the draft report recommend international standards development occur through organisations that allow the participation of all relevant stakeholders (i.e. Standards Australia and the IEC).