



GEMS Fee Review Supplementary Paper 2017

February 2018

For the attention of:

Commonwealth Department of Environment and Energy

By email: energyrating@industry.gov.au

Lighting Council Australia contact:

David Crossley

Technical Manager

Lighting Council Australia

Suite 5, 191 Riversdale Road, Hawthorn, VIC, 3122

PO Box 1058, Hawthorn, VIC, 3122

dcrossley@lightingcouncil.com.au

Lighting Council Australia submission to the *GEMS Fees Review Supplementary Paper 2017*

Lighting Council Australia (LCA) welcomes the opportunity to comment on the *GEMS Fees Review Supplementary Paper 2017 (The Supplementary Paper)*.

LCA welcomes the proposal by the Department of Environment to improve efficiencies and reduce staff costs particularly in the registration area. However, we are concerned about a number of areas in relation to the effect that proposed increased GEMS registration fees may have on lighting supplier businesses. In particular we are concerned that:

- Re-setting fees now is premature given that a review of the GEMS Act may fundamentally change the way that fees are collected.
- The proposal for fees to be re-set now and for future determination processes to again set fees is immature given the framework for the GEMS standards and determinations process is not yet finalised.
- The proposed 74% increase in fees for lighting products will further drive a price wedge between compliant and non-compliant products and make non-compliance more attractive.
- Cross subsidisation should not occur between different products. If subsidisation occurs then products will be paying for compliance activity and services that they do not receive.
- The high cost of GEMS fees and compliance does not align with other regulated economies and places Australian businesses at a competitive disadvantage compared to overseas vendors.
- The modelling does not seem comprehensive and there are discrepancies between some of the figures contained in the *Supplementary Paper* and the previous *GEMS FEE Review 2016-17* paper.
- The low numbers of check tests being undertaken will not act as a deterrent to the non-compliant market.

The following is relevant to consider including in this review:

Timing and relevance of this review in relation to possible future lighting regulation and possible changes to the Act

The *Supplementary paper* and proposals for lighting registration fees is based on a historical view of the regulated lighting market and does not reflect the potential costs to the lighting industry of potential LED regulations. It is estimated there is a considerably larger number of LED lighting products in the market than currently regulated traditional lighting products.

A review of lighting MEPS regulation is currently underway. It is unclear at the moment how wide the scope of any future lighting MEPS regulation will be so it is not possible to determine how many products will be captured and the total cost of regulation to industry.

LCA's main comment and concern in regard to the fee setting model requires the consideration and inclusion of future lighting regulations. The LED product market is currently unregulated (for energy efficiency) and is undergoing a rapid increase in the number of businesses and products in the market compared with traditional product market players and businesses.

Our main concern regarding fee setting is that the proposed lighting regulations (shaping to regulate LEDs) will dramatically increase the number of lighting products and businesses being regulated and significantly increase the burden on the lighting industry. Our primary position is that we would not like to see the lighting industry paying a higher proportion of the overall fees recovered by GEMS than what is paid now by the lighting industry. Also, future lighting regulations should not result in the lighting industry being subjected to increased compliance costs over current costs.

We understand that proposed regulation fees and costs would be determined as part of a new regulatory determination process. The information that has been made available to industry regarding the GEMS determination development process is concerning due to the lack of detail that has been provided to date. We are unable to support finalisation of this GEMS Fees Review process until further detail is available on the GEMS determination process.

A review of the GEMS Act is about to commence. Such a review may decide to fundamentally change the approach to registration and fees particularly for product areas like lighting where large numbers of models are present those models are modified and turned-over at a high rate. LCA highlights that making a decision on registration fees when the framework may soon change is premature. We suggest that both a review of the GEMS Act and the GEMS standards development/determination should be finalised before any fees for lighting product registrations are reset.

The average base cost for registration and compliance activities is \$539 (including \$375 for registration and \$164 for compliance activities). The cost of product registration is the most significant proportion of costs to date and could be reduced considerably if the pre-market costs were reduced by aligning with the latest comparable EU Directive.

The EU framework regulation EU Directive 2017/1369 allows for the voluntary uploading of technical reports including test reports and will require simply the uploading of product information to a database. It seems the main focus in the EU will be on post market compliance activity and not the uploading and assessment of product test reports.

The EU take the approach that they will not impede the placing on the market of products that comply. This aligns with LCA understanding that fraudulent test report information can be easily obtained and a pre-market approach is largely ineffective in removing non-compliant products from the market. Such a pre-market approach simply imposes significant cost on the compliant market.

Also, with significant increases forecast in the number of registrations (section 3.3 Future regulated products), the fee modelling should include forecasts in the cost savings that will be possible due to economies of scale being realised. Instead of such modelling the *Supplementary paper* includes only a statement that “the GEMS Regulator will continue to pursue efficiencies, engaging with and reporting to industry on a regular basis”. Modelling increases in efficiencies should be possible.

No cross-subsidisation should occur across product areas

Fees collected for particular product areas should be linked with monitoring and enforcement that is undertaken in that product area so cross subsidisation does not occur and compliance efforts are guaranteed in particular product areas.

Determining fees by ordering the average check test cost per GEMS product registration is completely dependent on the quantity of check tests performed in comparison to the quantity of registrations in that market segment (refer Table 5) and is not relevant to an equitable distribution of compliance activity across product areas.

Product areas should not be charged a fee for compliance activity that does not occur in their market segment.

Product registration numbers

There is a discrepancy between the number of product registrations reported in the GEMS Fees Review 2016-2017 paper (see Table 1 Revenue on page 12) and the number of product registrations reported in the *Supplementary paper* (see Table 1 Revenue on page 8).

The number of registrations is fundamental to this modelling exercise and should be re-checked to make sure the numbers are correct.

Non-staff compliance costs

The non-staff compliance costs for 2016-17 are reported to be \$828,000 (*Supplementary Paper, Table 2*). Page eight of the *Supplementary paper* reports that GEMS Compliance conducted check tests on 86 models of products. Page five of the *Supplementary Paper* lists non-staff compliance costs as the purchase price of a product and the laboratory check test fee.

The above reported information seems to indicate that the cost to purchase and test products was \$9,628 per model tested. This seems to be excessive so we request confirmation that this is not an error and request more detailed information regarding the breakdown of costs in this area on a per product basis.

We make this point because it is not likely to cost around \$10,000 to purchase and perform a basic (integrating sphere) photometric test on a lighting product and the lighting industry would not like to be subsidizing the cost of expensive products and tests in other product areas.

Compliance activity

The *Supplementary paper* outlines a breakdown of compliance activities in 2016-17 as follows:

- Market surveillance (checking registrations and labels) on 3929 products and
- Check tests on 86 models of products.

GEMS regulates 18 different product areas so on average less than five model check tests were undertaken in each product area. This does not seem to be a significant deterrent when compared with the tens of thousands of models of regulated products in some market segments like lighting and does not give industry confidence that the number of audit checks are or will be sufficient to achieve a high level of market compliance.

Discrepancy in the reported GEMS Compliance staff numbers

The *GEMS Fees Review 2016-17* paper reported “17 GEMS inspectors. Eight work for the Department of the Environment and Energy and nine work for state government agencies.” (page 12 of 25 under GEMS Inspectors).

The *Supplementary paper* reports (page 8) there are “the equivalent of 3.73 full-time equivalent staff associated with managing these processes”.

These figures are at odds and should be checked and corrected given the potential impact on the modelling.

Comparison with other regulated economies and countries

Other regulated markets such as Singapore and the EU charge much smaller amounts or are proposing no fee to register products. Singapore charge less than \$100 per registration and the European Union is not proposing to charge a registration fee.

In comparison the GEMS Regulator is proposing to charge between \$440 and up to \$917. Such high fees contribute to the high red tape and regulatory costs of doing businesses in Australia.

Future regulated products

The *Supplementary paper* states that “If new regulations are approved by the Council of Australian Governments (COAG) Energy Ministers it is likely that there will be a significant increase in the number of products regulated. If this is the case, fees will be reviewed to ensure they align appropriately with the costs of delivering registration and compliance services. Fees and fee bands for new products will be determined as part of the determination process.”

The above indicates that a market and fee assessment will be undertaken as part of a regulatory determination process. However, there is no certainty outlined regarding any reviews of fees in future if the fees set in a determination process are later found to be excessive.

The *GEMS Fees Review 2016-17* paper states, “The Government’s Cost Recovery Guidelines stipulate that cost recovered activities must have alignment between expenses and revenue over a reasonable period such as the business cycle of the activity. With all three options, if revenue exceeds costs over a business cycle then the government may suspend a rise in fees until revenue and costs balance out. In 2018-19 a large number of registrations are expected as new products are regulated and there is a commensurate increase in fee revenue. It is possible that the cost recovery rate will be over 100 per cent in 2018-19, but this is expected to balance out across the business cycle.”

The LED business cycle is currently 6-10 months. The above statement does not acknowledge that such short business cycles exist and does not provide LCA with any certainty that fees reviews will be undertaken at all after fees are set. Quite frankly, this approach is alarming to the lighting industry as there is significant potential for excessive fee collection with no certainty that such excesses would be halted.

Full cost recovery

Lighting Council members are reporting that they are now removing products from the Australian market based, in part, on the compliance costs of the GEMS program making such lines unprofitable. Any further increase in fees would mean a further decrease in consumer choice.

Industry already pays significantly more than a 50 per cent share of total program costs when industry compliance costs are included. Product development, testing, registration and other administration costs would likely be an order of magnitude larger than the cost to run the GEMS program. The GEMS Review Report estimated the cost impact on industry of the program is \$46.4 million annually and incorrectly suggests these costs are all passed on to consumers.

In reality it is not possible for the lighting industry to pass on all costs to consumers as lighting products have market price limitations based on consumer expectations. If product retail prices increase above consumer expectations, consumers no longer purchase those products.

Lighting Council Australia submits that the above points should be considered as part of the GEMS fees review. Our primary position is that the current co-contribution funding arrangements (most costs are currently borne by industry) are already stretching businesses, negatively impacting on the availability of products and any increase in fees or the proportion of fees paid by the lighting industry will negatively affect the availability of lighting products further.

The *Supplementary paper* (Table 7) reports the new fee for lighting products will be \$670. The actual average fee proposed over the period to 2021 is \$766 and represents a 74% increase in registration fees for lighting products. We expect that such an increase will further drive a price wedge between the compliant and non-compliant product markets and make non-compliance more attractive.

We would welcome the opportunity to discuss the points in our submission further.