

**Independent Review of the *Greenhouse and Energy Minimum Standards Act 2012*  
Coversheet for Submissions on Discussion Paper**

Overview	
<p>The Australian Government is undertaking an independent review of the <i>Greenhouse and Energy Minimum Standards Act 2012</i> (GEMS Act), in line with section 176 of the Act. Ms Anna Collyer, a partner at law firm Allens, has been appointed to undertake the review. The review is a statutory requirement to ensure the GEMS Act remains appropriate and effective in reducing Australia's energy consumption and greenhouse gas emissions. The review now invites public submissions on the Discussion Paper, which will be considered to inform the development of a Draft Report.</p>	
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Submission instructions	
<p>Submissions are due by 5:00pm AEST, Wednesday, 28 March 2018. Any submissions received after this date will be considered at the Government's discretion. Where possible, submissions should be sent electronically, preferably in Microsoft Word or other text-based formats, to the email address listed below. All submissions must include a cover sheet. Submissions can be forwarded to: <a href="mailto:GEMSreview@environment.gov.au">GEMSreview@environment.gov.au</a> Alternatively, submissions may be posted to the address below to arrive by the due date: Attn: GEMS Review team Appliance and Building Energy Efficiency Branch Department of the Environment and Energy GPO Box 787, Canberra, ACT, 2601, Australia</p>	

### Confidentiality and privacy

The Department will treat all submissions as public documents, unless the author requests the submission be treated as confidential.

Public submissions will be published in full on the Department's website. The Department will publish the name of the individual or, name of the organisation (if applicable) and state or territory with your submission.

A request may be made under the *Freedom of Information Act 1982* (Commonwealth) for a submission marked 'confidential' to be made available. Such requests will be determined in accordance with provisions under that Act.

The Department will deal with personal information contained in, or provided in relation to, submissions in accordance with this cover sheet and its Privacy Policy ([www.environment.gov.au/privacy-policy](http://www.environment.gov.au/privacy-policy)). Personal information is collected for the purposes of identifying authors of submissions. It may be used and disclosed within the Department and to other persons for the purposes of carrying out the review, and otherwise as required or permitted by law.

**Do you want this submission to be treated as confidential?**       **Yes**       **No**

11 April 2018



Ms Anna Collyer  
GEMS Act Review Team  
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By email: [GemsReview@environment.gov.au](mailto:GemsReview@environment.gov.au)

Dear Ms Collyer

Lighting Council Australia (LCA) welcomes the opportunity to provide comment on the Discussion Paper released by your GEMS Act Review Team on 1 March 2018.

LCA's response to the Discussion Paper is based on consultation with the lighting luminaire and lamp supply industry. Industry welcomed an extension of response time granted during a period when many from the Australian lighting industry were overseas attending the largest international biennial lighting exhibition and conference.

LCA has similar reservations about the timetable for this consultation process going forward, and we would like to express our concerns that the short timeframes for the GEMS Act Review may limit the depth of the analysis into what LCA considers to be the serious shortcomings of the legislation. These shortcomings include the inability of the GEMS Regulator in practice to undertake meaningful compliance and enforcement with respect to lighting supply in Australia; the unreasonably high cost of compliance with the legislative framework; and the lack of commercial consideration displayed by some policy developers in the Department of the Environment and Energy.

LCA believes that this GEMS Act Review ought to be modelled on first-principles including a full review in accordance with best practice regulation guidance that specifically countenances the possibility of a finding that the GEMS Act is failing to achieve its aims and ought to be repealed.

Many of the above issues are expanded upon in the responses to the consultation questions in the Discussion Paper which are included overleaf.

We look forward to a productive and detailed discussion with you about the issues raised by this GEMS Act Review.

Yours sincerely

A handwritten signature in blue ink, appearing to read "D. Crossley", is written over a light blue horizontal line.

David Crossley  
Technical Manager  
Lighting Council Australia

## Lighting Council Australia – Response to issues raised in Discussion Paper, 1 Feb 2018

### 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?*

Lighting Council Australia notes that the GEMS Act calls for a review of the *operation* of the Act, not merely the *performance* of the GEMS Act. This broader set of inquiries—ie, the operation of the Act—appears to be reflected in section “1.3 – Terms of Reference and methodology”. LCA considers that the Review Team ought to consider at a fundamental level whether the GEMS Act is achieving its legislative aims specifically in regard to:

- Increased costs to consumers (due the management of third-party externalities said to arise from the provision of appliances and electrical equipment).
- Compliance levels within the market.
- The ability of the GEMS Act to limit ideologically driven policy developers within the Department of Environment and Energy from controlling and driving policy direction and minimum energy performance standards. An unbiased approach is preferred by industry.
- The diminishing returns of the current GEMS Act approach (individual product regulation) and the need to consider installation and systems efficiency particularly in the context of new technology and service model delivery.

## **2. *What has been achieved through the GEMS Act?***

Lighting Council Australia considers that benefits arising from the GEMS Act are overstated and that the GEMS Regulator has materially failed in meeting the outcomes of the 2015 Review which specifically called for additional steps to reduce the regulatory burden on industry.

The operation of the GEMS Act is contemporaneous to a period where considerable energy efficiencies have been achieved across the economy. The driver of energy efficiency savings has been technological improvements and innovation. Significant increases in electricity prices over the same period has influenced economic decision-making by households and businesses, pushing increased investment into more energy efficient equipment.

Lighting Council Australia considers that an evaluation of the efficacy of the GEMS Act must be undertaken by assessing the impact of the legislation against the relevant counterfactual—no GEMS Act—and not merely against the pre-GEMS Act period. The GEMS Act has undoubtedly raised consumer costs and Lighting Council Australia notes that the GEMS Act Review Team has not included any estimate of the regulatory cost of the overall scheme in its Discussion Paper.

Lighting Council Australia calls for an independent calculation of the regulatory cost of the GEMS Act framework for the consideration of stakeholders in evaluating the operation of the GEMS Act.

Moreover, the Discussion Paper has not included an assessment of the impact of non-conforming products. Non-conforming products may be both registered or unregistered. Registered non-conforming products may be erroneously or fraudulently registered under the GEMS Act.

Unregistered non-conforming products are sold outside the parameters of the GEMS regulations. In both cases, a lack of compliance and enforcement activities on behalf of the GEMS Regulator are responsible for these goods being sold. Lighting Council Australia calls for detailed analysis of the rates of registered product non-conformance and unregistered product non-conformance.

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

Lighting Council Australia considers that the main strength of the GEMS Act is its national approach, which is preferable to any multi-jurisdictional alternative that might otherwise be considered. However, the weaknesses of the scheme far outweigh the benefits. These weaknesses are summarised below.

#### **The GEMS Act does not limit ideologically driven policy developers**

LCA is currently entering its fourth year of negotiations regarding proposed lighting regulations. The policy proposals during this time have mostly been conducted by junior regulatory staff who seem to treat industry views with suspicion and contempt, stack working groups with individuals and consultants who are likely to favour their views, do not understand the commercial implications of their proposals and who seem to be ideologically driven to the point whereby they attempted to implement the world's most stringent standards that are not aligned with major economies like the EU and U.S.A. (Australia is two percent of global lighting production so we should follow and not lead major markets).

One slight limitation to such excessive behaviour is the sole use of Australian Standards as the basis for determinations. Australian Standards are developed through a consensus-based process including the wide range of relevant stakeholders, are widely accepted and fair.

The GEMS Act allows for the use of alternative regulatory standards and this is potentially problematic for industry stakeholders because the regulatory processes to develop an alternative regulatory standard do not contain the same pillars of consensus, transparency and balance as contained within the Standards Australia process. The limited guidance material developed by the regulator to date contains a requirement to consult but does not include a requirement for consensus to be achieved. Our experience with regulatory consultation processes is that the views of industry stakeholders can be easily ignored and so we have little faith that this alternative process will deliver equitable outcomes.

LCA recommends that the GEMS Act should only reference Australian Standards and should remove the allowance to reference alternative regulatory standards.

#### **Insufficient compliance activity on registered products**

Lighting Council Australia considers that the compliance monitoring, verification and enforcement activity of the GEMS Regulator is unacceptably poor.

A recent report on July - December 2017 compliance activity confirmed that 45 GEMS product had been check tested.

Since its inception in 2012, the GEMS Regulator has processed over 23,000 approved product registrations, and 75,000 additional individual products. As at February 2017, there were 17 GEMS Inspectors. In 2015-16, the GEMS Regulator surveyed 104 models of GEMS products.

During 2016-17, the GEMS Regulator completed check tests of 86 models of 12 GEMS products. It found seven instances of non-compliance, resulting in the cancellation of registration of four models.

Lighting Council Australia considers that the GEMS check testing program is barely scratching the surface in terms of the quantity of testing that should be undertaken to ensure a high level of compliance with the GEMS Act. Lighting Council Australia considers that given the cost of the scheme to industry and consumers, the GEMS Regulator is significantly underperforming.

Lighting Council Australia considers that this situation is particularly egregious with respect to the lighting market and arises because the current compliance approach is not fit for purpose. The

lighting market is characterised by many hundreds of suppliers, high sales volumes, and a high level of innovation causing product turnover. An approach whereby compliance officers visit retail stores, identify the products captured by a GEMS determination, photograph those products and at a later date compare the details in the photographs to products registered on the database is unlikely to meet the compliance aims of the regulatory framework.

### **Insufficient compliance activity on unregistered products**

Lighting Council Australia notes that the presence of non-conforming, unregistered products significantly undermines the GEMS Act regulatory approach. Firstly, the sale of this equipment reduces consumer confidence in the purchase of ostensibly regulated goods. Secondly, it has a deleterious impact on legitimate industry participants, who face higher regulatory costs in complying with the legislation but find themselves competing on price with vendors of unregistered products, which are lower cost.

Lighting Council Australia notes that there is very little compliance and enforcement activity in this area, and notes that the lighting market has a number of characteristics that differentiates it from other products regulated under the GEMS Act. Firstly, lighting equipment tends to have a much lower per-unit cost than many other products regulated under the GEMS Act. Secondly, there are considerably more product varieties than in other product markets. Finally, lighting equipment is sold by a greater diversity of vendors—from major supermarkets to speciality lighting stores—than other product types.

### **High pre-market costs**

Lighting Council Australia notes that the GEMS Act is designed to require pre-market registration. This makes Australia a high-cost jurisdiction for suppliers in comparison to other jurisdictions.

The GEMS Act approach is particularly onerous for the lighting market as it requires:

- Mandatory product testing to a full test standard and the compilation of test reports;
- Registration of all regulated models (including a significant registration fee)
- Significant administration costs (awareness raising, the purchase by suppliers of standards, administering testing and registration, product audit administration costs).

In comparison, the European Commission eco-design and labelling Directives include:

- Deemed product compliance; and
- An allowance for suppliers to compile their own conformity documentation (including manufacturer design information, component specifications, benchmark testing, quality assurance processes), and declaration of conformity.

*That is to say, the EU framework does not require full product testing.*

The United States' Lighting Facts program requires a limited number of product parameters to be included on product labels. The more onerous Energy Star program is voluntary.

### **Unreasonable approach to limits and tolerances**

Lighting Council Australia considers that the GEMS Approach to MEPS limits and tolerances is unreasonable because GEMS determinations do not include an appropriate tolerance allowance on check test results and GEMS audit tests are often undertaken on a single sample.

In comparison, 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.

To illustrate the variability of testing results, please refer below to Diagram 1 which shows test results for a single lamp across a number of laboratory tests.

To be clear – this is the range of test results of one lamp. The EU ameliorates the impact of testing variability by testing multiple (usually 10) units and by allowing reasonable tolerances.

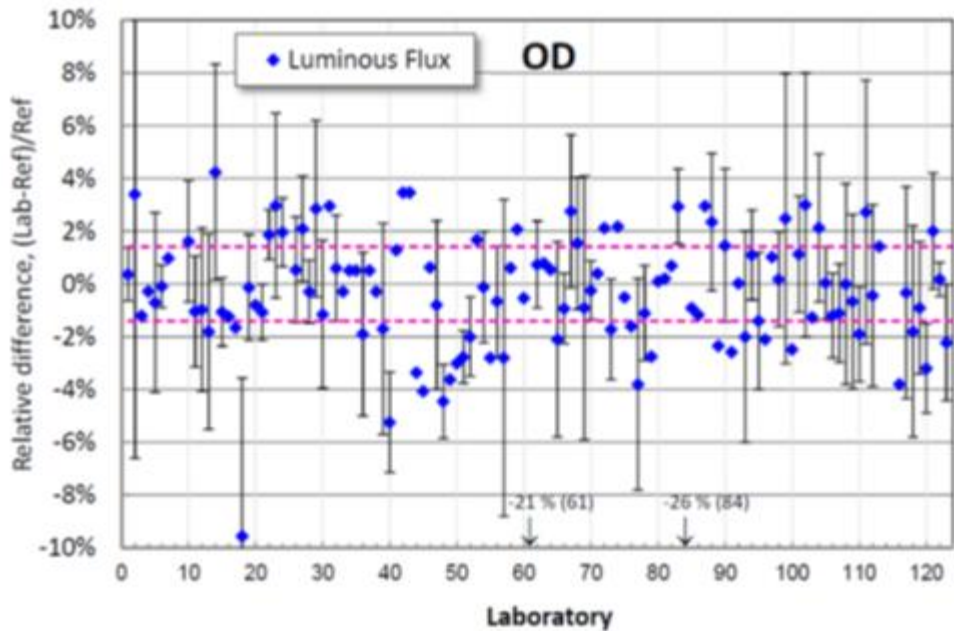


Figure 1 – NEMA laboratory data – relative differences of total luminous flux for omnidirectional LED lamp



### **Deficiencies in the product registration approach**

During the GEMS Fees Review, the Department revealed that the majority of the revenue raised through product registration fees is allocated to maintaining the registration database and in verifying product specifications against test report data. The GEMS Regulator is on notice that unscrupulous suppliers and manufacturers can and do supply fraudulent documentation, test 'golden sample' products, or change component specifications during post-registration product manufacturing.

This specific issue should be evaluated and assessed in the GEMS Act Review.

### **The impact of high pre-market costs on product improvements**

Lighting Council Australia notes that the 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.

This problem is especially pronounced in rapidly innovating sectors of the lighting market, particularly LED lamps. 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, 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.

### **The GEMS Act does not accommodate low volume and bespoke products**

The GEMS Act currently requires regulated products to be tested and registered before being placed onto the market. These requirements provide a disincentive to register or import/manufacture low volume and bespoke products due to the high compliance burden. Suppliers of these types of products do not have the high volume of products over which to amortise costs.

Losses arising from the under provision of certain product types—or put differently, the utility arising from consumers having additional choice—are often difficult to quantify. These losses, however, should not be disregarded especially where there are clear indications that a regulatory intervention imposes particularly high-costs for low-volume product lines.

### **Insufficient notice periods given to product markets**

The GEMS Act does not guarantee a period of time between a Determination publication and implementation. Industry requires certainty and sufficient time to plan and implement product changes.

Lighting Council Australia recommends that a notice period that sufficiently accommodates all product categories should be included within the GEMS Act.

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

A full calculation of the relevant costs and benefits of the framework may demonstrate that the GEMS Act is failing to meet its stated aims and that the legislation ought to be repealed and replaced with a different approach. Lighting Council Australia considers that if a comprehensive assessment under the Australian Government Guide to Regulation were undertaken today in 2018, the GEMS Act in its current formulation would not be supported, especially with regard to the regulation of lighting products.

LCA considers that this GEMS Act Review ought to be modelled on a first-principles and full review in accordance with best practice regulation guidance.

Alternatively, the GEMS Act could at least be improved by legislative amendments to improve the flexibility of the Act and by making changes to the approach taken by the GEMS Regulator.

##### **Policy development and COAG agreements**

Policy development is undertaken by staff within the Department of Environment and Energy who consult stakeholders and then promote their final views up through the Senior Council of Officials to the Council of Australian Governments (COAG). It is LCAs experience that the consultation process is often flawed, industry views are easily ignored by Department staff and only when an industry becomes active at a senior political and Department level are its real and detailed views heard by those decision makers.

Unless industry stakeholders apply significant political pressure, they are unable to see the detail of policy proposals that will be presented to COAG. LCA seeks a greater level of transparency regarding the detailed policies presented to COAG so that it can assist Ministers to see all the perspectives of policy proposals including issues that are important for consumers and industry.

##### **Changing pre-market requirements to reduce compliance costs**

Lighting Council Australia contends that the registration of lighting equipment through the GEMS Regulator does little to mitigate consumer risks. The most important set of risks—electrical safety—are regulated under state and territory legislation. As a consequence, registration requirements for lighting equipment should be abandoned or significantly reduced and a larger focus should be given by the GEMS Regulator to post-market compliance activity and market education.

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

- Not include a registration fee;
- Require only basic product information such as model numbers and basic product information; and
- Make provision for the voluntary uploading of product conformance information.

##### **Better use of import data**

Lighting Council Australia considers that little attention has been given to the ability of the Regulator to compare import data against supplier product registrations, to undertake desktop audits of high risk companies and their conformance documentation, and to improve market education.

For more than five years during Australia's mining and heavy engineering construction boom, industry warned the GEMS Regulator that imported heavy engineering plant likely contained non-conforming electric motor products. The Regulator was slow to act and has just recently started to implement some industry suggestions. Needless to say, the heavy engineering construction boom is complete and the non-conforming products are already installed. The regulator is on notice that this failure did occur and should not occur again in future.

### **Amend the revenue collection model**

Lighting Council Australia notes that certain product classes in the lighting market have no domestic manufacturing market. As a consequence, all of those products are imported into Australia. Import data could provide a basis to a change to the revenue collection model. The current approach of applying registration fees at the point of product registration has led to high registration (certification) fees being applied at a single point in time. This has the additional effect of reducing the diversity of products being sold on the market (see weaknesses discussion at Q3 above).

An alternative approach would be to require fees to be paid proportionally with imports. The fees would be based on import volumes and paid periodically, in arrears. This approach would have the effect of reducing industry opposition to the misguided product family registration approach, which has the effect of creating a dilemma for suppliers because family registrations reduce costs but raise the risk of an entire product family being removed from the market due to a single product being found non-compliant.

The GEMS Compliance team has confirmed that the Act requires the Regulator to cancel the entire registration if a single instance of non-compliance is found within a product family. Whether the alternative import-based revenue collection is adopted or not, the GEMS Act should be amended to avoid the product family problem by increasing the flexibility of the framework.

### **Enhancing product check testing**

The Regulator should undertake much higher numbers of product check tests through a two-step process involving inexpensive non-accredited indicative testing using methods agreed with affected industry stakeholders. Products that fail indicative testing by a large margin (say greater than 20% outside of requirements) should be required to undertake their own product testing at the cost of the supplier. Large error margins are required due to the large measurement variation that exists between individual products and even between accredited laboratories (see Diagram 1 above).

### **Manufacturer data should be allowed to be used for supplier conformity documentation**

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.

### **Identify and educate all product suppliers in the market**

Tariff import codes and ABS statistical codes can be used to identify all GEMS product suppliers. The regulator should undertake to identify all suppliers and educate them as to the requirements of the legislation. This should include identification of suppliers of built-in GEMS products (i.e. where GEMS products are built in to other equipment such as electric motors contained within industrial plant).

### **GEMS Process documentation is required**

The recent consultation regarding GEMS implementation of standards and labelling highlighted the fact that there is currently very little in the way of process documentation published and this allows the Department to make unilateral decisions with little (if any) consultation and to make decisions regardless of the outcomes of any consultation. These issues are raised in Lighting Council Australia's Submission to the Department on the E3 Approach to Implementing MEPS and Labelling Papers, dated February 2018.

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

No. Lighting Council Australia considers that the GEMS Regulator has failed to account for industry feedback from that review, and has failed to take additional steps to reduce the regulatory burden on industry. The Department is adopting an increasingly unilateral approach to decision making.

Industry feedback to the 2015 GEMS Review is summarised below. This feedback was provided by AiGroup and CESA in conjunction with Lighting Council Australia.

- *[On whether the Determination implementation period should form part of the Consultation RIS] 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.*

Additional comment: Recent determination changes were made to fluorescent lamps with only 6 months implementation time given to industry.

- *[On the use of published standards in determinations] Industry recommends that standards that form the basis of GEMS Determination only be used from organisations meeting the above criteria [referring to accredited Standards Development Organisations] and that these standards be published prior to the issuance of the Consultation RIS.*
- *[Products in supply chains at date of Determination] 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.*
- *[On the issue of Registration fees] 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.*
- *[On the issue of Cost Recovery] Industry recommends that the Government considers a more equitable arrangement with cost recovery share 50/50 between Government and industry.*
- *[On the issue of data used for cost benefit analyses] 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.*
- *[On whether GEMS should recognise the disadvantage for local manufacturers to respond to changes in standards] Industry recommends that the cost and timing elements in the Consultative RIS take into account costs unique to local manufacturers to comply with changes.*
- *[On surveillance and enforcement activities] 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.*

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

The GEMS Act seems to have been left behind by the recent rapid development of new technologies (i.e. LED lights) and new service delivery models (i.e. lighting as a service).

A challenge for the GEMS Act is to not hinder the development of new markets and efficient technologies. The lighting industry itself, without the imposition of GEMS Regulations, has invested huge sums in the development of highly efficient LED lighting technology. All new lighting product development is only occurring in new technology areas such as LED, OLED and LED laser.

New service delivery models such as lighting-as-a-service are being rolled out particularly in commercial and industrial markets. These services provide installation owners with new technology products installed at no cost, guaranteed bill savings and installation maintenance and then hand the installation over to the client at the end of a fixed period (typically five years) at no cost.

Costly, inefficient regulation will only impede these markets. Instead of burdening this technological development with inefficient regulation (i.e. the current GEMS Act approach), the Australian Government should be promoting the significant financial benefits of new technology products and services and exploring ways to encourage consumers to improve the efficiency of their whole installation (and not just single appliances).

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 occurs 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). The GEMS Regulator's failure to undertake effective market compliance and enforcement is another key challenge for the market.

### ***a. Are the appropriate products covered by the current GEMS regulations?***

Lighting Council Australia considers that halogen lamps should be phased-out of the market, with appropriate exemptions for special applications.

### ***b. Are the priority product categories the correct areas to be targeting?***

Lighting Council Australia considers that enhanced MEPS and new regulations for lighting should not be considered without an evaluation of regulatory failures to date, especially on the matter of effective market compliance and enforcement, and the poor suitability of the GEMS product registration approach for the lighting sector.

**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?**

The current GEMS Act is focused mainly on pre-market compliance activity by suppliers. This makes the regulatory environment for vendors a high-cost environment.

The post market compliance monitoring and verification by the regulator is haphazard, inefficient, and inadequate to guarantee a high degree of compliance. It is ineffective in markets where there are high numbers of suppliers and quick turn over of product models. Issues regarding product family registrations have been dealt with previously in this paper but are also relevant to this point.

Most importantly, the policy and determinations framework is woefully inadequate in terms of documentation to cover the process and does not provide stakeholders with any reassurance that developments will be objective, balanced or consensus based.

Lighting Council Australia considers that Departmental staff take an unduly pro-regulation approach, failing to appropriately consider industry's position. Departmental staff have previously produced consultation documents that failed to provide accurate and objective information to consulted parties and decision-makers.

The inability or unwillingness of Departmental staff to engage earnestly and in good faith with industry is a significant challenge for industry and undermines significantly the confidence of industry that regulatory issues will be given a fair hearing and that alternatives will be considered. Lighting Council Australia considers that there is a marked lack of commercial reality reflected in GEMS proposals.

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

Lighting Council Australia considers that the consultation process and timelines for GEMS determinations are flawed. These issues have previously been raised in Lighting Council Australia's response to the "E3 Approach to implementing MEPS and labelling" in February 2018. The issues raised in that document are only summarised briefly here and Lighting Council Australia refers the reader to that submission for a full statement of the issues contained.

In that response, Lighting Council Australia stated:

"Lighting Council Australia's general response to this [E3 Approach to implementing MEPS and Labelling] proposal is that we trust the Standards Australia process and the limited information provided by the Department does not give us confidence that the rigour around the Department's process will be sufficient to develop standards without technical barriers or technical errors and with lowest compliance costs. The Department should develop a process that is demonstrated to be at least equal to the Standards Australia process, especially with regard to the elements of balance, transparency and consensus, or meet the requirements set for standards development organisations that are published on the Standards Australia website. These processes are endorsed by the Commonwealth Government.

...

Standards Australia's processes incorporating balance, consensus and transparency and have proven to be reliable in the development of Australian standards including within the GEMS regulatory framework for more than two decades.

...

The Draft Approach to Implementing MEPS does not match the Standards Australia process, especially in the areas of consensus and transparency. In considering this draft, LCA states:

- The primary means of developing standards requirements for use within GEMS Determinations should be kept within Standards Australia.
- Exceptional circumstances may occasionally justify an alternative approach such as a Commonwealth Government and industry resourced process using an agreed and detailed process. LCA would agree to this approach if the Commonwealth Government's processes are underpinned by the principles of balance, consensus and transparency as outlined in the Standards Australia's Standards Development Organisation guidelines

In the context of a review of the GEMS Act, LCA recommends that the GEMS Act should only reference Australian Standards and should remove the allowance to reference alternative regulatory standards. We have little to no confidence that a regulatory led process will achieve equivalent and equitable outcomes.

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

Lighting Council Australia offers compact fluorescent lamps (CFLs) as an example. This class of lighting products is experiencing significant reductions in sales volumes in the market and MEPS should be removed from these products.

In this case, the Department ought to consider falling market share (from 50% market share to around 17% now and falling dramatically); consumer preference (these products are deficient in every respect to LED technology); market dynamics (LEDs will naturally take the majority of CFL market share in the coming two years); economic drivers (CFL production costs are increasing through diminishing economies of scale in manufacture); and global trends (CFLs are on the verge of no longer being economically viable for manufacture internationally).

These comments are offered in addition to Lighting Council Australia's earlier-stated position that the entire operation of the GEMS Act ought to be reviewed from first principles, evaluating evidence in relation to the costs and benefits of the regulations, and the ability of the framework to meaningfully give effect to the aims of the legislation. At the very least, all Determinations ought to be subject to mandatory first-principles reviews periodically and subject to sunset clauses bringing about the expiry of an instrument after 24 to 36 months. If the Department is unable to substantiate the case that a regulatory instrument is required to give effect to a legitimate policy aim, the instrument should not be allowed to persistently reduce the economic welfare of consumers and market participants. It appears that there is very little or no awareness amongst Departmental staff that the GEMS Act plays a significant role in raising costs for consumers, and that any additional costs must be made explicit in evaluating the benefits that may arise from a market intervention.



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

Lighting Council Australia considers the GEMS registration process to be a key area for review and reform.

**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?**

As previously argued in this paper, the product family registration approach raises a needless trade-off for industry participants. This trade-off is cost savings for multiple-product registrations against the risks arising from having an entire product family deregistered.

Lighting Council Australia considers that lighting products should be regulated differently due to the characteristics of lighting products and the market within which they are sold.

Lighting Council Australia notes that similar arguments may apply to other market areas such as electric motors.

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

Lighting Council Australia considers that the majority of pre-market requirements should be removed. Should mandatory product registration continue to be adopted, lighting product registration should be limited to a small number of product parameters.

Lighting Council Australia considers that the uploading of conformity document should be voluntary. The GEMS Act Review Team should consider revenue collection based on import volumes, as argued previously in this 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?**

Lighting Council Australia considers that the imposition of additional compliance costs on industry is an untenable suggestion. Rather, the GEMS Act Review Team should ensure that the Regulator undertakes post-market compliance and enforcement in a more effective manner.

**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?**

Yes. Lighting Council Australia considers that post-market compliance monitoring by the Regulator of products carrying supplier declarations provides a better regulatory approach.

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

Lighting Council Australia suggests that the GEMS Act Review Team considers the alignment of GEMS-related processes with the ERAC EESS and ACMA national databases so that suppliers only needed to register at a single point.

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

No, for the reasons outlined in the 2015 GEMS Review Response cited above.

The current grandfathering provision does not accommodate products that are imported before a determination is implemented but are also compliant at the time of importation. In that case, those products need to be registered when the determination is implemented, raising cost and complexity for suppliers. Lighting Council Australia acknowledges that where a product is imported after a determination, it may be appropriate for that product to be registered. However, where no



additional products are imported, there should be no need to register old products. In short, the GEMS Regulator should avoid the imposition of effectively-retrospective Determinations.

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

**a. Is the current compliance regime delivering effective outcomes?**

No, for reasons argued elsewhere in this paper.

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

Lighting Council Australia considers that indicative testing of lighting products should be undertaken using inexpensive testing apparatus. Where a product fails to meet a requirement by a clear margin, say 20 per cent, then it may be appropriate to impose an obligation on the supplier to fund independent testing of that product.

Lighting Council Australia also notes that the EU allows 10 test samples and takes the mean average value with a 10 per cent tolerance on the performance measure. This accommodates product performance variations and acknowledges test lab measurement variation.

**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?***

Lighting Council Australia considers that the imposition of MEPS on LED lamps will be both costly for industry and consumers and will not achieve significant improvements in the quality of products sold on the market.

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

Lighting Council Australia notes that Australia's product registration approach is likely to be the costliest of any jurisdiction in the world. The current EU approach of deemed conformity with an emphasis on post-market compliance and market surveillance has a number of clear advantages to the Australian approach. Lighting Council Australia considers that the GEMS Act approach unduly preferences mandatory approaches, despite evidence that this is not the best approach. Lighting Council Australia notes that other jurisdictions, such as the United States, have a greater emphasis on voluntary programs. Lamp performance data collected by the Department as part of the 'Re-evaluating the case for MEPS for LED lamps' shows that the United States has better lamp performance, despite the absence of an expensive Australian-style GEMS approach.

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

While Lighting Council Australia considers that a number of changes could be made to the approach of the GEMS Act—including specific consideration of repeal—a key obstacle to effective regulation is the disposition of the staff responsible for the administration of the GEMS Act. Because the administrators of the program appear to have pre-determined views about the manner in which an area should be regulated, stakeholders have lost confidence in their ability to ensure that commercially viable proposals will be chosen.

See 3 above for more information in this area.