Ms Anna Collyer
GEMS 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

CESA COMMENTS ON THE DISCUSSION PAPER FOR THE INDEPENDENT REVIEW OF THE GEMS ACT 2012

The Consumer Electronics Suppliers Association (CESA) welcomes the opportunity to comment on the above discussion paper and appreciates the extension of time to respond. I apologise for the late submission.

As mentioned at the E3 Review Committee meeting, CESA members are generally supportive of the GEMS program. We are aware of submissions from other industry associations that we work closely with, in particular the Ai Group, AREMA, GAMAA and the Lighting Council; we generally support their submissions, so have not repeated many of the detailed issues provided in those submissions.

Our main issues with the current Act and its administration are as follows, not in any particular order:

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

  This relates to a recent legal interpretation of the Act regarding previously non-regulated models already in the country prior to a determination becoming enacted. 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.

  CESA do not believe this was the intent of the Act when it was originally agreed to. We want to ensure 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 determination application date, whether they comply or not with the

determination requirements, may continue to be sold without registration until stock is exhausted. If there are concerns about possible stockpiling of products then the Act allows for a limited grandfathering period to be applied, after proper industry consultation.

- **Limited flexibility to address urgent technology or test material changes.**

  There have been occasions where test materials specified in standards or determinations suddenly change or become unavailable. There have also been occasions where technology has changed product design so that products become available which no longer fit within a standard or determination. There needs to be a mechanism where the GEMS Regulator or relevant Minister are able to introduce a ruling or similar document that allows alternative means of complying with a determination so that products may continue to be tested and supplied until such time as a replacement determination is made. This type of system worked well under the previous State based schemes, where regulators produced Regulatory Rulings.

- **Standards versus determinations for MEPS requirements.**

  CESA strongly prefers the use of the standards approach instead of the use of determinations, in particular because the department is not required to reach consensus under the determination approach, whereas bodies such as Standards Australia are required and do strive to reach consensus in the development of standards.

  On many occasions in response to consultation papers, like this one, major stakeholders have submitted similar comments, such as details of regulatory burdens, only to have their comments "noted" or "taken into consideration" and the result is very little change to regulatory requirements.

  The department has claimed that the standards process has regularly caused delays in the past and that the determination process will be quicker. However delays are frequently outside of the realm of standards or the department. We are aware of a number of occasions where standards development was put on hold waiting for delays to a RIS approval, or waiting for technical input from the department or its technical consultants. For example the RIS process for the current replacement determination for household refrigerators was actually started quite a few years ago. The delay had nothing to do with standards. The department repeatedly stopped and started work in this area. The introduction of the E3 prioritisation Plan helped the department to focus on particular products including household refrigerators, but progress was still quite slow. Now that the RIS has finally been approved, it is expected that the standards process will be completed before the end of this year.

  Another example is the current air conditioner replacement determination process. The test method standards were passed without delay over a year ago.

Industry agreed to use the determination process in this case to introduce the regulatory requirements as a trial, it was due to be finalised by October last year. The department was excellent in consultation and document revisions, however the decision RIS has been delayed by the Ministers office, so it is now unknown when the project will continue and be finalised. This is not a delay caused by the department, but for industry it is still a frustrating delay caused by government.

In the past we have seen problems where determinations have differed from standards and quite often the additions or changes by the legal people have changed technical meanings. Even in the current draft air conditioner determination, legal have introduced requirements that do not make sense. The proposed wording requires an energy label on a product within a carton to be visible even when the product is sold from an importer to a retailer. This is under review and fortuitously it is still in the drafting stage. I am happy to provide additional examples.

When all stakeholders agree, we are not against the use of determinations over standards in limited warranted circumstances, for example to address technology changes or test material problems mentioned in the previous dot point above.

- **Insufficient funding for market surveillance and enforcement activities.**

CESA is concerned about the lack of overall market place surveillance and enforcement activities relative to the number of registered products. We acknowledge that the Act needs to follow government full cost recovery policy, but as submitted in the CESA response to the GEMS Fees Review, we believe more funds should be directed towards enforcement by further reducing registration administration costs. For example, in the electrical safety EESS scheme, industry agreed to contribute reasonable funding providing those funds were spent on surveillance and enforcement to weed out non complying products and suppliers. (I would like to add that the current registration team have done a great job improving the registration process and the enforcement team do a great job with the limited funding provided to them, but we would like to see much bigger changes.)

The registration of products that have a large number of models and are not required to carry an energy label needs to be reviewed. Much time and expense is wasted by industry and the department in registering these types of products. Perhaps the Act could be changed to allow a supplier to provide a supplier declaration of compliance for products they supply and to pay an annual fee instead of registration on a model-by-model basis. For example the ACMA has used such a scheme for many years where for the vast majority of suppliers, model registration is not required. Similarly, under the EESS the majority of products supplied are not regarded as medium or high risk but are still required to be safe. Suppliers of those products make a supplier declaration; list the types of product they supply and pay a fixed annual supplier registration fee. These

types of systems place much less of a regulatory burden on industry, but still provide regulators with the required funding for surveillance and enforcement activities.

- **Determination transition period versus grandfathering period**

  There appears to be some confusion over the purpose of these periods. A **transition period** was intended to provide suppliers with sufficient time to change product designs to meet new requirements specified in a determination. The Act default period 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. CESA requests that the default period of 12 months in the Act be replaced with "a period to be consulted on during the CRIS".

  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.

CESA would be pleased to provide more information on our comments and to participate in further discussions.

Yours sincerely

Colin Doyle
General Manager
Consumer Electronics Suppliers Association
PO Box 250 Avoca Beach NSW 2251
Ph: +61 2 4382 6985
Mobile: 0418 166 610
Email: colin.doyle@cesa.asn.au