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PALS CONSULTING

28 March 2018

To: Ms Anna Collyer
Partner
Head of Innovation
Allens

Dear Ms Collyer,
RE: Review of GEMS Legislation

Please find attached our response to the request for public input to the review of the GEMS Act 2012.

Please feel free to contact the authors for further comment on any of the issues or recommendations made herein.

The attached submission can be published by the Department in any many it deems effective.

Regards,

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GEMS ACT REVIEW
Submission by Partners in Appliance Labelling Systems (PALS) Ltd

This is a submission to the independent review of the Greenhouse and Energy Minimum Standards Act 2012. Partners in Appliance Labelling Systems Ltd (PALS) is a not-for-profit company, established by experts with many years experience in the fields of equipment and appliance standards and energy efficiency. PALS objectives are to encourage the expansion of standards and labelling schemes, and Minimum Energy Performance Standards (MEPS) and to support the wide adoption of the highly efficient equipment that is available on the market, but about which the market is generally poorly informed.

The views in this submission are those of the authors although industry clients with products subject to GEMS have contributed funding for the production of this submission.

Overview

The GEMS Act bans inefficient equipment from sale in Australia, or requires the display of a comparative efficiency label on some appliance types sold to consumers.

All OECD countries include standards and labelling programs akin to the GEMS Act. Most OECD countries regulate many more equipment types on efficiency grounds than Australia; a position that regularly sees citizens and industry members call on the Australian Government to catch up to other countries.

Nationally and internationally, expert studies have repeatedly found standards and labelling programs to be amongst the most beneficial actions by governments for their economies, and for addressing global issues like climate change. Australian Treasury modelling identifies actions under GEMS to be cheaper, quicker and more certain than many other market interventions available to government agencies. The global consulting firm, McKinseys, has produced cost curves for all regions in the world demonstrating similar findings. The International Energy Agency has even named 'energy efficiency' a fuel type in recognition of its potential; they report energy efficiency was responsible for more than three quarters of all greenhouse gas emissions abatement achieved around the world between 2014-16.

The GEMS Act is a discrete piece of Commonwealth legislation focussed solely on regulatory interventions to improve the energy efficiency of equipment sold in Australia. The GEMS Act is not a broad legislative expression giving authority in law to all of the Federal Government's equipment energy efficiency policies. The legislation imposes very specific obligations on equipment suppliers to sell only product exceeding minimum energy performance standards, or product bearing a mandatory comparative energy label. The Commonwealth legislation introduced in 2012 replaced an amalgam of State laws on the same narrow topic, finally providing national consistency to laws first imposed by NSW in 1986.

The GEMS Act is well-crafted legislation with provisions covering the process and procedures for including new equipment types, and improving the efficiency of already regulated products as innovative developments occur. In the 32 years since governments in Australia first imposed legislative demands on the efficiency of equipment, some 22 equipment types have been included in the regulations authorised by the GEMS Act. Internationally, more than 55 equipment types are included in similar programs around the world.

PALS believes that the operation of the GEMS Act can be substantially improved through better aligning its provisions with the operation of 21st century markets.

PALS suggests the GEMS Act could be amended to address present shortcomings in the underlying regulatory process that are directly costing the Australian economy and consumers by regularly missing easy opportunities to improve the energy efficiency of equipment stocks.

The amendments PALS propose include achieving:

- By reversing the onus-of-proof of economic benefit, streamlining the process for capturing improvements to energy efficiency in stocks of equipment, as compared to the present situation where CoAG Energy Minister's edicts to align Australian rules with equipment efficiency developments overseas, is constrained or stalled by other Federal processes that require gathering of domestic economic evidence quantifying the benefit of any proposed harmonised regulation before any new regulation can be implemented;

- a clearer partnership and processes with industry being established through the operation of a formal and regular consulting forum between government and industry, buttressed by provisions in the GEMS Act, to ensure all stakeholders can identify opportunities and communicate priorities and timetables for improving equipment energy efficiency;
- a formal commitment to share information with industry groups wanting to promote more efficient equipment to the market; and
- draft similar legislation to impose similar "light touch" regulation in other sectors of the Australian economy, like transport and the built environment using the revised GEMS Act as the model.

A number of comments in response to specific issues raised in the review discussion paper are made.

1. A better balance to economic justification processes

The GEMS Act authorises the Minister through his or her government agencies to impose efficiency regulations upon equipment markets. This intervention is justified in economic terms because, in the past, the market has not kept pace with product innovation or customers have not sufficiently valued the energy and environmental impacts of their purchasing decisions. When the option to purchase inefficient equipment is removed, post hoc market studies have found the community gains economic benefits through energy savings, while purchaser choice and price is little impacted as suppliers rapidly adjust to the new paradigm with new, more efficient equipment offerings.

CoAG Energy Ministers have long embraced efficiency settings that seek to foster trade, meet Australia's international environmental commitments and avoid wasting energy and money through the continued use of inefficient products. These considerations were the rationale when CoAG Energy Ministers agreed, around 2005, that our national equipment efficiency targets should "match world best regulatory practice". Expressed another way, the Energy Ministers instructed that the forebears of the GEMS Act regulations should harmonise with our major trading partners to save local stakeholders the cost of developing unique Australia standards. 'Harmonising' in this context means the GEMS regulations call up existing minimum energy performance standards from another country and use the same testing methodology as imposed in that country.

On the face of it, these settings would seem to satisfy all trade, energy and environmental considerations but they have faltered when other Commonwealth requirements for regulatory change are also imposed by the bureaucracy.

The Commonwealth has sensible procedures that seek to limit the imposition of red tape (unnecessary regulation) on business. The Commonwealth also requires any proposed regulation in any field to be subject to cost benefit analysis, so Ministers are informed of the actual economic benefit or imposition in Australian terms of a proposed action. However, as has been witnessed too frequently in relation to regulating improvements in energy efficiency, the time taken to obtain data and evidence from market participants often stretches into many years, resulting in missed opportunities to align with international trading partners, increased costs to our economy and resulting in Australia, rather than benefitting from energy efficiency, become a dumping ground of lower efficiency equipment stocks when trading partner efficiency programs move ahead of ours. This process has resulted in Australia seeing no new equipment types regulated for energy efficiency in the last five years and has effectively undermined the value of energy efficiency requirements as a spur for innovation.

PALS is certainly not suggesting these useful policies aimed at avoiding ineffective red tape and economic analysis should be ignored or jettisoned when considering equipment energy efficiency regulation. Rather PALS is suggesting that a small change to process be made, effectively reversing the present onus-of-proof, when considering GEMS Act regulations.

Under the present system, Australian government agencies are required to complete a robust cost benefit analysis, make the results known, conduct public consultation and report market views to the responsible Minister. This system imposes cost on not only the agency involved but all those stakeholders contacted for views and information. This cost is deemed reasonable to ensure the regulation delivers its claimed benefits; that it is in the community's interest.

Agency staff request detailed information from market players (without any power to compel data production). In some markets, such regulation may not be in the commercial interest of all participants, triggering arguments and mis-information being provided to Government agencies. Even when provided Government agencies may not necessarily be well able to validate all data types from markets not previously involved with GEMS regulation.

Delays occur in gathering published data, settling on the type of additional information required, debating its impact by experts, dealing with confidentiality claims and otherwise vigorously testing the accuracy and veracity of data. While this standard-form approach is sensible when government contemplates action without recent market experience or exposure to stakeholders, PALS argues that is not the situation when Australia is contemplating matching the efficiency standards already imposed by a trading partner, and particularly on equipment types that are already subject to GEMS.

If, on the other hand, the introduction of new MEPS on equipment and appliances were based on overseas regulatory developments, Australian agencies would already have public access to a form of cost benefit analysis (conducted in that other country) and could even use the published data to inform its own processes. Indeed, Australian government agencies may well have information-sharing arrangements already in place with sister organisations in those countries that encourage at least confidential sharing of information about the efficiency trends.

PALS submits that Australia should not rely on overseas data slavishly without due process to consider our unique national circumstances, if those circumstances do actually exist for what are generally globally traded manufactured goods.

What PALS is advocating is that, in circumstances where an OECD or major trading partner country has already regulated equipment on efficiency grounds, Australian government agencies match that development by proposing the date when a harmonising regulation becomes law in Australia.

In effect, the government would postulate that the economic benefits already found overseas will be delivered in Australia if similar standards are imposed. Agency staff open that proposition to public comment and scrutiny, suggesting that in absence of alternate Australian-specific data, the equipment type will be regulated in our country with at least the same MEPS. This means that any stakeholders with data establishing that the proposed regulation is not in our country's interest still have an opportunity to supply that data.

The resulting consultation process would be more focussed (and less costly) because it calls on only those stakeholders not content to follow the international lead to table their information for public scrutiny. They retain the chance to have their argument debated publicly, potentially supported by other stakeholders and eventually adopted by government. What they loose under this proposed change is the ability to delay regulatory processes because they will not provide data to evidence their claim.

PALS recommends that the protection of accessing a clear public procedure should be protected in statute, thereby promoting the process to stakeholders most affected by future regulatory proposals.

The resulting change is not actually radically different from the current Commonwealth procedure. The two-stage regulatory impact assessment process would be retained but the present 'consultation' discussion paper would simply cite the overseas efficiency standard and any available data and propose a date that the cited standard is proposed to become law in Australia.

In the PALS submission, this reversal-of-onus will still result in several procedural benefits to the wider community. For those companies content to keep pace with international developments, they do not have to participate in the debate and can start their planning processes about making or ordering future equipment models. They incur neither the cost of time taken to prepare and argue submissions nor the cost of collecting and providing data to confirm Australia benefits from being part of the global market for that equipment type.

The consultation draft moves from an information plea to a more certain statement of intent, UNLESS stakeholders provide data and arguments to the contrary. All stakeholders will have the benefit of a more certain and timely process and the GEMS Act will not impose unnecessary data collection costs on companies that do not see a benefit in participating in a dialogue that effectively seeks to slow down Australia adopting world best regulatory practice.

Opponents might argue energy efficiency regulation are not so special as to warrant exclusion from Government-wide economic justification guidelines. This characterisation, however, denies history and ignores the fact that Australia is a small player in global manufacturing, contributing less than 2% of global production of manufactured goods.

While the GEMS Act is Commonwealth legislation, it replaced state laws, and through the trans-Tasman agreement also settles New Zealand mirror efficiency regulations. It is legislation that impacts on 10 jurisdictions. Following

Commonwealth-only guidelines and procedures, therefore, is hard to justify. The economic assessment process should have the capacity to take the views of these other jurisdictional interests into account. With GEMS Act policy settings anticipating following regulations already economically justified in another country, PALS asserts that unique circumstances should apply to the economic justification of energy efficiency regulation. The GEMS Act should reflect this unique, position by offering a speedier way to make decisions.

Continuing to follow the existing system without modification will only continue to deliver the far less-than-optimal outcome and continue the many years of delay and the costs of lost opportunities.

In the submission of PALS, when GEMS regulations are proposing to follow an international lead, the regulatory process and cost benefit process should be modified as described above and spelt out in a specific procedural regulation under the GEMS Act. In circumstances where a detailed economic analysis of the Australian market is needed to be commissioned, where regulations are, for instance, considering equipment types sold only in Australia, this analysis should ensure the other benefits derived from energy efficiency are estimated to have a monetary value.

The IEA has identified more than a dozen other economic benefits delivered by energy efficiency. Under the Commonwealth guideline, these other benefits (eg lowering peak demand, community health, greenhouse abatement and energy system security) are not given any economic value. This should change so that the total costs and benefits calculation is available to stakeholders to critique and for Ministers to be informed of the true value of their decision.

Justice delayed is often referred to as justice denied. Multi-year timelines for reviewing the case for common regulation with a trading partner might receive such criticism; processes taking years have become the usual outcome for all GEMS regulatory proposals, far exceeding the time taken to conduct similar processes overseas. The cost of such delay is significant, not just in energy, environment, greenhouse and economic terms, but also to Australia's international credibility as an active country committed to international agreements and commitments.

2. Stakeholder involvement in a formal advisory body

The agencies administering the GEMS Act have a long history in engaging stakeholders affected by GEMS Act decisions in formal consultation processes prior to regulatory decisions being made. At various times, several advisory bodies have also been created to provide stakeholders opportunities beyond those formal regulatory consultations. Such advisory bodies contribute to regular general communication and sector-specific events and their very existence fosters a significant degree of good will between industry, community and government.

The Department, however, controls all terms of reference, membership entitlements, contact frequency and other terms, without protection within the legislation. Several industry groups have been frustrated by their lack of influence over the forward GEMS agenda. For example, the Electrical Fans industry agitated for government to consider regulating the efficiency of fans for nearly a decade before it eventually became a priority, and the Chiller industry had to make representations to the Department of Energy and Environment to successfully convince the Department to not withdraw existing efficiency regulations on chillers. Even though the regulated MEPS on Chillers are now approaching 9 years old, and the efficiency of some models of equipment in the market far exceeds these standards, the industry believed that even these outdated regulations were better than having none, a situation that could have potentially seen extremely poorly performing equipment dumped in the Australian market.

While these examples might show that informal mechanisms and ad hoc communications can work (eventually), the counterargument is the cost of the time wasted on years of agitation to have equipment types placed on the forward agenda, or industry resources expended to successfully continue the 'status quo'. The informality of the consultation frustrates participants and slows eventual outcomes past what might be thought reasonable.

PALS is not suggesting any stakeholder forum have more than an advisory capacity, informing the Minister of their views on topical subjects or answering references sent by the Minister.

What PALS is recommending is that the GEMS Act authorise the creation of a formal Advisory Board. The regulation might contain the terms of reference and potential membership of a statutory advisory committee that meets twice a year in time to inform the Commonwealth Minister of their views (in time for the CoAG Energy Ministers meetings). This body

should be protected in the GEMS statute so that past claims of poor communication or outcomes (such as consensus industry views were not supported by the Department) cannot be made in the future.

The statutory board would report directly to the Minister and represent an alternative, legitimate pathway to gain his or her attention to all stakeholders. Moreover, advisory board members should be paid a sitting fee and expenses (with costs recovered from registration fee revenues) so that they can be promoted as persons capable of progressing energy efficiency debates to other stakeholders. This move to include a regular advisory board in statute means that any affected entity may lodge recommendations or objections with them about Departmental activities (or inactivity). As GEMS regulations are partially funded by equipment suppliers, a formal body providing an alternate communication avenue to the Minister seems a fair compromise to improve upon the present, totally discretionary system and remove forever claims that the Department controls communications entirely at their discretion.

Such arrangements would mirror the certainty provided to state energy efficiency bodies when ceding legislative power to the Commonwealth prior to 2012. A better partnership will be forged if stakeholders have certainty surrounding future regulation consultation and Act administration.

3. Supporting 'More than MEPS' higher efficiency targets – formalising information sharing

PALS encourages the Commonwealth to seek to integrate its legislative interventions like the GEMS Act with its suite of complementary policies and programs that are aimed at fostering the sale (including manufacture or importation) of even more efficient equipment than that required by the Minimum Energy Performance Standards (MEPS) established by GEMS.

While MEPS serve a vital and economically valuable role in removing the least efficient models of regulated equipment from the market, the range of efficiencies available in some equipment stocks is still wide, and very considerable economic and environmental benefits are available to consumers and industry if they were aware of the savings possible from the most efficient models of equipment available to them.

The mandatory comparative energy efficiency label is authorised by government in the GEMS Act on the basis it redresses an information inequality in the marketplace.

Purchasers of consumer type appliances cannot be expected to undertake the detailed investigation necessary to benchmark equipment fairly. With reliable energy operational costs included, customers are empowered to compare competitive offerings and make informed purchasing decisions.

This justification does not extend to mandatory labelling or promotion of non-consumer equipment types. The theory runs that industrial and commercial purchasers are not so information-poor that the community cost of legislated information (eg mandatory labelling) schemes is warranted. PALS would support the Department not moving to institute mandatory labelling in those markets. Indeed, the recent New Zealand Government experience where it has formally severed ties with Energy Star is relevant.

PALS would however encourage that the GEMS Act authorise DoEE sharing publicly available registration information with industry players. Other markets have chosen to support providing information for business customers. Energy Star (created by US Government authorities) provides a voluntary opt-in program that helps businesses and individuals save money and protect the environment through superior energy efficiency. The Energy Star label can be found on more than 75 different product categories, new homes, commercial buildings and industrial plants and extends to other countries like the European Union as well as Canada, Iceland, Japan, Liechtenstein, Norway, Switzerland, and Taiwan.

In PALS submission, the GEMS Act should contain legislative settings that facilitate stakeholders operating schemes promoting the sale of highly energy efficient equipment through voluntary collective action.

In the future, Australian Governments may want to re-enter this policy space for particular markets or, at least support actions by state jurisdictions and trade associations wanting to promote the most efficient equipment available at that time.

The GEMS Act could be amended to ensure the capacity to share information is lawfully within the ambit of Departmental officers. For example, the data used to register models (and not subject to formal confidentiality claims) could be shared publicly and immediately with third parties operating better practice schemes.

This sharing might facilitate the identification and sale of more efficient equipment and enhance the enforcement capability of the Department; by having other players monitoring product developments and passing back information about potential non-compliance.

The GEMS Act could establish specific forms of assistance to suppliers and intermediaries that meet requirements of informing the market of the their more efficient equipment. This could involve for instance testing equipment against a 'very high efficiency' standard, such as those standards set by the Clean Energy Regulator for equipment to participate in Emissions Reduction Fund projects. Very useful assistance to suppliers of exemplary equipment might take the form of a partnership with government to promote the most efficient equipment types to government procurement bodies, ultimately including governments agreeing to purchase only the most efficient equipment available.

Energy efficiency requirements have often been linked to cheap market transformation. Governments, as large customers, can actively drive market transformation in their own purchasing habits, while also demonstrating responsible economic and environmental policies by purchasing equipment with the lowest total cost of ownership[1], and by definition, the lowest greenhouse emissions impacts.

4. Specific comments on Discussion Paper questions and topics

4.1 More enforcement needs to be encouraged and reported

The GEMS Act is the nationally consistent expression of equipment energy efficiency labelling and standards first instituted in NSW in 1986. In the time the scheme was managed under State jurisdictional laws, only a handful of Court actions were ever instituted, with many stakeholders complaining about inadequate enforcement activity as the reason they supported a move to Commonwealth law.

The explanatory memorandum associated with the GEMS Act said the additional sanctions authorised under the Act (when compared to powers under state laws) were included to provide the Regulator with a wide range of sanctions to discourage non-compliance. In the five years of operation, the Regulator has not utilised these additional legislative sanctions (though enforceable undertakings have been given by two suppliers recently).

In the submission of PALS, the provisions of the Act and the statements of the Regulator on how he or she will apply the law are all appropriate to the compliance function.

The recommendation for change is about how subsequent enforcement actions by the Regulator have not used the available sanctions nor matched past rhetoric. No court actions nor administrative fines have been applied since the Act began. Any transition period from state jurisdictional enforcement to the Federal administration should long since have expired. The Review should call for enforcement to be given much higher priority over the next few years, especially insofar as exploring the extent of new possible enforcement sanctions and administrative powers/fines. Furthermore, the Review should instruct that future annual reports carry a dedicated section about compliance. This reporting should not only describe the number of actions taken, but also quantify the funds spent (against notional registration fee allocations) and qualify how these activities have reduced the risk of non-compliance (under the intelligence gathering, risk assessing scheme).

This priority and reporting is warranted because the GEMS Act collects funds from registrants in part to fund enforcement activities. Though these funds are sent to Consolidated Revenue, the Act commits the Regulator to undertake enforcement activities, notionally to the budget collected for that purpose. Stakeholders have a reasonable expectation that this funding will be put to good use and should be subject to public reporting. The Review should encourage more detailed reporting on

[1] Total Cost of Ownership, or TCO, is a measure used to compare the capital cost, maintenance cost and energy consumption cost of two models of a type of equipment over the life of the equipment. When TCO is compared the sometimes higher upfront capital costs of highly efficient equipment is often seen to 'pay back' the additional capital required many times over in lower energy consumption costs and maintenance over the life of the equipment. TCO is a concept generally ignored in the construction industry for instance, where property developers are generally only concerned with capital cost, leaving eventual tenants or owners with higher than necessary operating costs, and running low efficiency, often very long life equipment. This split incentive is a classic example of 'least cost inefficiency' being baked into the built environment and infrastructure.

enforcement activities so that suppliers breaching the law and the Department administering the collected funds are held to account.

Moreover, if sanctions under the Act have not been used at all after a decade, the Act should be amended to remove those provisions because they have not actually been used by the Department for their intended purpose. In the vernacular, the Australian Energy Efficiency Regulator should use it or loose it. In a worst case scenario, the function could be transferred to an enforcement body more capable of administering the GEMS Act if enforcement actions and activities have not increased by 2023.

4.2 GEMS Act as the repository for other Commonwealth Government equipment energy efficiency policies

The Commonwealth Government has chosen to leave most direct policy interventions about equipment energy efficiency to State Government bodies. The discussion paper has posed some questions that might see the ambit of the GEMS Act expand beyond its current narrow focus on mandatory standards and labelling.

For example, the suggestion that the Act include a Guideline about when voluntary action is best supported or an alternate to regulation. Given such options are already included and fully costed in every decision put to Commonwealth Ministers, it would seem such an option would delay consideration of an already long procedure and not add new value or consideration to the existing regulatory process. If, however, the PALS proposal to have the regulatory impact statement and consideration process be included in a specific regulation under the GEMS Act that reverses the onus of proof of economic benefits, then the inclusion of an instruction to ensure voluntary schemes have been considered fully by the Department and industry groupings might well be included in this regulation as a fair compromise.

4.3 GEMS Act to include support for non-mandatory actions

Many stakeholder groups have asked that some consideration of supporting their industry go hand-in-hand with the Ministerial consideration of the regulatory impact process. When regulation is being considered, support for other endeavours that will improve the market should be blended into the proposed market changes. Instead of an 'either/or' situation, the best efficiency outcome might be from complementary industry actions being created that enhance the benefit of regulation alone.

PALS believes suppliers, subject to GEMS registration fees, may well agree to slightly higher fees if presented with ideas to trial voluntary schemes and other enhancements. The Commonwealth would need to commit to spending the collected funds for only those projects and trials agreed by the statutory advisory body and by the relevant stakeholder gatherings.

For example, the GEMS Act could anticipate the need of Ministers to coordinate state white certificate schemes (awarded to those who purchase more energy efficient goods) by permitting and facilitating a more nationally-consistent outcome (using a tithe on white certificate revenue and registration fees to partially fund the final interface between legislative and voluntary actions). With the use of registration data useful for that purpose, the GEMS Act could also have authority for actions supporting or promoting energy efficiency for particular equipment.

4.4 GEMS Act as a model for similar Commonwealth legislation for other sectors

The GEMS Act could be a model for legislation that sets standards in other sectors of the economy. Buildings and transport have been successfully included in efficiency improvement schemes overseas and at least stakeholders might be consulted for their views. The Commonwealth could explore with state jurisdictions if the GEMS Act provides a model for future cooperation.

4.5 E3 Priority Plan

The current, and the immediate past plans continue to present work priorities as if derived from an Australian-focussed assessment procedure. Given past Ministerial Council decisions, the link to action overseas should more clearly be spelt out in these documents as the rationale for preparatory work.

Stakeholders will be more accepting if the future work priorities are linked to global innovation and overseas regulation. The rationale for that action has been explained many times in terms of the Australian Government's own commitment to

open-markets policies, binding greenhouse gas reduction treaties and working to assist Australian suppliers compete globally. At present, the grounds for work priorities would seem to include other non-disclosed issues. Full disclosure of the criteria used to select priorities in the published document would allay stakeholder concerns.

4.6 Removal of equipment from the GEMS Act

PALS agrees that there is a need to have the capability to remove equipment types from GEMS regulation. The current proposal follows the Commonwealth Government Guideline and therefore addresses the main concerns and issues relevant to Ministerial decision-making.

PALS recommends that if equipment regulation is to be linked to developments among our major trading partners, the process should formally include a step to monitor and analyse the current status of an equipment type in these other economies. If other countries are reversing regulation, those actions would support such an outcome in Australia. If other countries are continuing to increase the stringency of their equipment efficiency regulation, the Minister will be interested in the reasons why our policy setting is so out-of-step with trading partners. It would be prudent for this activity to be included in the published procedure, especially as this question will be contemplated by many stakeholders in considering how they express their support or otherwise for the any proposed removal of a regulated equipment type.

4.7 Enforcement of "voluntary" standards associated with the equipment efficiency program

PALS suggest that aggrieved parties avail themselves of legal advice focussing on injunctive and damages relief under section 52 of the Trades Practices Act (misleading and deceptive conduct by corporations).

The fact that an Australian Standard exists creates user expectations in the marketplace that those specified performance levels are being met. Misleading statements about performance or operation can be litigated under existing laws and do not require additional remedies in the GEMS Act. For example, the publication of the demand response device standard by Standards Australia gives rise to remedies under that Act if the performance settings specified in that Australian Standard are not met. The publication of the Australian Standard revises old, or sets new industry benchmarks, which then give rise to action by a party damaged by the equipment not meeting this established standard. There seems little sense in the GEMS Act attempting to supply alternate remedies when other legislation already exists providing an adequate and legitimate legal remedy for mis-statements about DREDs and other equipment caught up in voluntary standard-setting activities.

If stakeholders want action under the GEMS Act, the standard should be made mandatory so all the statutory obligations flow onto suppliers.

4.8 The lack of unique model numbers causing enforcement problems

PALS suggests that the Department rely on advice from registering companies about how best to identify models. As suppliers already have responsibilities to be able to identify their products under national consumer law, PALS recommends that GEMS registering procedures be made more flexible to accommodate existing supplier practice. The problem appears to be caused by registration and enforcement processes within Government not being able to cope with the many and varied ways different equipment suppliers have chosen to identify their products. The past practice of forcing suppliers to create unique registration numbers just for GEMS Act registration should be stopped. The regulation capturing each equipment type in the GEMS Act could contain any variation to usual registration practice recommended by stakeholder consensus and authorised by the Minister.

4.9 Section 61 is illustrative and should not be applied to all equipment markets

The two-stage procedure compliance testing system described in this section was developed to provide a fair process for suppliers of mass-produced appliances, responding to allegations of not meeting their statutory responsibilities.

This procedure reflected a statistically valid sampling technique that meant the tested samples were a true reflection of the efficiency of the entire range. This sampling procedure is obviously not suitable for bespoke products or equipment made (or imported)-to-order. Because it is impractical to force this sample testing system on such suppliers, the Act should also reflect the simpler system where suppliers of particular equipment markets are held to account after one check test. In these

circumstances, it may well be a fair compromise that enforcement sanctions for alleged breaches involving the failure of only one sample may be limited to future injunctive relief and purchaser reparations (with that issue determined on a case-by-case basis by the Regulator with the benefit of advice from the relevant stakeholder advisory group). Future equipment regulations might call up the simpler procedure where necessary.

4.10 Fee charges

PALS lodged a submission with the Department in 2018 recommending changes to fee structures which would remove the substantial cross subsidies that have been allowed to develop since state single model, single fee registrations were the only option. PALS acknowledge that administrative convenience and processing should be a consideration in calculating fees but so too must the cost of enforcement testing. In a spirit of compromise, PALS suggested 'family' registrations should cost a minimum of two single model registrations for all equipment types so that multiple model registrations involving 2 or more made an adequate contribution to both administration processing and verification procurement and testing. The recent electric motor consultation still focussed the debate only on the 'families of models' facility enabling models with equivalent electrical design to be registered on the same family registration. PALS requests that the Reviewer ensures Departmental processes consider the ramifications of fee arrangements on all recoverable cost considerations under the GEMS Act. At present, companies that maintain single model registrations cross-subsidise substantially (in PALS submission beyond acceptable levels) the compliance testing costs of companies that lodge family registrations.