



# Developing a Legislative Framework to Support Successful MVE Activities for Energy Efficient Lighting

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# Introduction

## ■ Compliance

- actions of a program participant that are in accordance with program requirements or rules

## ■ Program Requirements

- what will the program achieve?
- how will it be achieved?
- who is responsible for implementing and managing the program?
- who is obliged to comply with the program?
- what are they obliged to do?
- how will compliance be measured?
- what are the sanctions for non-compliance?

# Overview

## ■ Legislative Framework

- a system of laws, rules, agreements, etc that establish the way that something operates in business, politics, or society.
- Formal
  - Acts - legislation passed by the parliament.
  - Regulations, Codes, etc
  - Standards
- Less Formal
  - Administrative Guidelines, Program Rules, Strategies, Policies, Procedures

# Overview

## ■ Legislative Framework ...

- Context dependent
- Existing governance structures
- Design of the MVE regime
  - Mandatory
  - Voluntary
- Resources are available to assist you – CLASP, UNEP, UNDP, etc
- Successful programs around the world.
- Clear, comprehensive, transparent, and communicated

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *What will the program achieve?*

- regulate energy efficiency and labelling standards for appliances and other products.

### ■ *How will this be achieved?*

- mandatory minimum efficiency requirements (MEPS) for products
- nationally consistent labelling requirements
- GEMS Act relies on subordinate legislation
  - GEMS (Registration Fees) Act 2012
  - GEMS Regulation 2012

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *How will this be achieved?* (continued)

#### ■ **GEMS Determinations**

- requirements for each GEMS product class either:
  - directly in the determination or
  - with reference to the applicable clause in the product standard.
- specify product classes covered and not covered
- GEMS level requirements (MEPS)
- GEMS labelling requirements
- requirements for conducting tests
- reference to the relevant Australian/New Zealand Standard.
- manage details in less formal components of the legislative framework

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

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Greenhouse and Energy Minimum Standards Act 2012



Greenhouse and Energy Minimum Determinations

GEMS (Double-capped Fluorescent Lamps) Determination 2012



Australian/New Zealand Standards

AS/NZS 4782.2: 2004

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

- *Who is responsible for implementing and managing the program?*
  - Effective MVE regimes require sufficient authority and powers to ensure compliance
  - **GEMS Regulator**
    - monitor and enforce compliance with the GEMS Act
    - may appoint GEMS inspectors
  - **GEMS inspector**
    - Formal powers – inspection, monitoring, and investigation
    - Part 7 – “Monitoring and Investigation” ensures compliance with the act
    - Part 8 – “Enforcement” provides for a range of actions to enforce the act
    - Powers of entry, search, inspection, monitoring, investigation, operating equipment, accessing information on premises, securing equipment, securing evidence, and applying for warrants.



# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

- *Who is responsible for implementing and managing the program?* (continued)
  - **GEMS inspector ...**
    - framework to define “suitable training or experience”
    - “Guidelines for the Appropriate Use of GEMS Act 2012 GEMS inspector Powers”
      - achieving and maintaining the competencies of a GEMS inspector
      - how and when powers may be used
      - risk management
    - operational activity guidelines
      - standard operating procedures for MVE activities
      - critical decisions and the escalation of issues
      - evidence collection and handling
      - taking appropriate notes and records of conversations
  - these documents are the components of your compliance manual

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

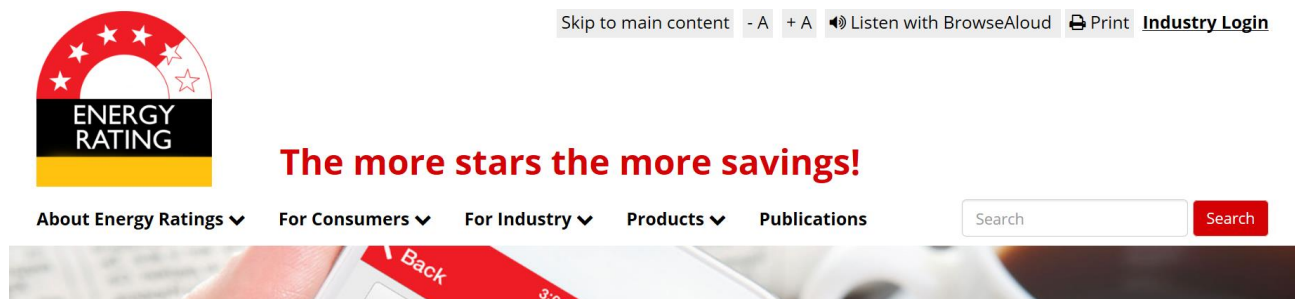
- *Who is obliged to comply with the program?*
  - Be clear with definitions
  - GEMS Act applies to the supply and commercial use of GEMS products:
    - international/local manufacturers
    - importers
    - suppliers
    - retailers
    - commercial users
    - internet/on-line suppliers
  - Facilitation - ensure entities know and understand their obligations
  - Records of engagement prove intention in cases of suspected non-compliance demonstrating that an entity was aware of obligations and sanctions relating to non-compliance.

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *What are they obliged to do?*

- To supply a product in Australia it must be:
  - tested – test reports not always required
  - compliant – must meet MEPS and comply with labelling requirements
  - registered – with the GEMS Regulator
- Web presence - [energyrating.gov.au](http://energyrating.gov.au) – provides a wealth of information



# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *How will compliance be measured?*

- Compliance in **Entry Conditions, Market Surveillance, Verification Testing**
- GEMS Compliance Policy
  - assisting responsible parties to understand their rights and obligations;
  - supporting responsible parties who want to do the right thing; and,
  - actively pursuing those who opportunistically or deliberately contravene the law.
- Compliance Monitoring Plan
  - intelligence driven, risk based approach

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *How will compliance be measured?* (continued)

#### ■ **Market Surveillance**

- GEMS Act provides inspection, monitoring, and investigation powers
- Inspection powers
  - similar to those of an ordinary consumer
  - only exercised in the public area of a store
  - store owner may refuse to allow a GEMS inspector to enter or remain on the premises
- Monitoring powers
  - may only enter the store with consent or under warrant
- Investigation powers
  - reasonable grounds to suspect evidence is on the premises
  - may only enter the store with consent or under warrant
- Failure to ensure proper, accountable, and rigorous rules around MVE activities will severely undermine the intent and effectiveness of the program.

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *How will compliance be measured?* (continued)

#### ■ Verification Testing aka Check Testing

- How products are obtained
- Who tests products
  - accredited laboratories? what type of accreditation?
  - conflict of interest? – independent and accredited laboratories test for industry too
- How products are tested
- Results
  - how is product, manufacturer, laboratory variability defined and accounted for?
  - how do you account for results falling just outside agreed variability levels?
  - evidentiary requirements – test reports may be challenged.
- How are products disposed of after test?
- **Will your processes withstand challenge?**
- <http://www.energyrating.gov.au/about/legislation/check-testing-program/>

# Australian Case Study:

## Greenhouse and Energy Minimum Standards Act 2012 (GEMS Act)

### ■ *What are the sanctions for non-compliance?*

- contained within the GEMS Act
- internal guidelines, must detail how they will be applied
  - educative letters
  - suspension or cancellation of registration,
  - enforceable undertakings,
  - infringement notices,
  - civil penalty orders
  - injunction
  - publicise breaches

## Developing a Legislative Framework to Support Successful MVE Activities for Energy Efficient Lighting

- *How might this be applied in your situation?*
  - Context
  - You are not on your own
  - Lessons from an Australian perspective:
    - clear, unambiguous, comprehensive, transparent, and well communicated
    - flexible
    - authority and powers
    - accountable and documented internal policies, guidelines, etc,



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