



Greenhouse and Energy Minimum Standards Amendment (Administrative Changes) Act 2023

No. 77, 2023

An Act to amend the *Greenhouse and Energy Minimum Standards Act 2012*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 77, 2023

An Act to amend the *Greenhouse and Energy Minimum Standards Act 2012*, and for related purposes

[Assented to 20 September 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Greenhouse and Energy Minimum Standards Amendment (Administrative Changes) Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--------------------------|---|-------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 21 September 2023 |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Customised products

Greenhouse and Energy Minimum Standards Act 2012

1 Section 15

After “in relation to that product class.”, insert “Furthermore, certain kinds of customised GEMS products may be offered for supply without being registered (see subsection 17(2A)).”.

2 After subsection 17(2)

Insert:

- (2A) Subsection (1) does not apply to an offer to supply a GEMS product if the GEMS product:
- (a) is or will be manufactured or modified on request by an identified customer to customised requirements; and
 - (b) is covered by a GEMS determination that is prescribed under subsection (2B); and
 - (c) meets any other requirements that are prescribed under subsection (2B).
- (2B) The GEMS Regulator may, by legislative instrument, prescribe:
- (a) GEMS determinations for the purposes of paragraph (2A)(b);
or
 - (b) requirements for the purposes of paragraph (2A)(c).

3 Subsections 17(5) and (6) (at the end of note 2)

Add “and subsection (9) (evidential burden for matters in subsection (2A))”.

4 At the end of section 17

Add:

Evidential burden for matters in subsection (2A)

- (9) In proceedings for a civil penalty order under the Regulatory Powers Act for a contravention of subsection (5) or (6), a person who wishes to rely on subsection (2A) bears an evidential burden in relation to a matter in subsection (2A).

Note: In a prosecution for an offence against subsection (3) or (4), a defendant bears an evidential burden in relation to a matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

Part 2—Deemed compliance

Greenhouse and Energy Minimum Standards Act 2012

5 After section 27

Insert:

27A GEMS requirements—deemed compliance

- (1) The GEMS Regulator may, by legislative instrument, declare that specified classes of products or specified models of GEMS products are taken, for the purposes of this Act, to comply with one or more requirements, or one or more aspects of one or more requirements, of a specified GEMS determination:
 - (a) in specified circumstances; or
 - (b) if specified conditions are complied with.
- (2) Without limiting subsection (1), if a GEMS determination specifies requirements for conducting tests using methods specified in the determination, conditions specified for the purposes of paragraph (1)(b) may relate to meeting specified alternative requirements or using specified alternative methods.
- (3) However, the GEMS Regulator must not make a declaration under subsection (1) unless:
 - (a) the GEMS Regulator is satisfied that making the declaration is likely to promote the objects of this Act; and
 - (b) the requirements (if any) prescribed by the regulations for the purposes of this paragraph are complied with.

6 At the end of Division 2 of Part 4

Add:

34A GEMS determinations—incorporation etc. of material as in force or existing from time to time

- (1) This section applies if:

Schedule 1 Amendments
Part 2 Deemed compliance

- (a) a GEMS determination makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or other writing (the *incorporated instrument*) as in force at a particular time; and
 - (b) there are one or more changes to the incorporated instrument after that time that the GEMS Regulator is satisfied are of a minor nature.
- (2) The GEMS Regulator may, by legislative instrument, declare that the incorporated instrument has effect in relation to the GEMS determination as if the incorporated instrument contained the changes specified in the declaration.

Part 3—Enabling timely and more targeted exemptions

Greenhouse and Energy Minimum Standards Act 2012

7 Section 22

After “from requirements”, insert “, or aspects of requirements,”.

8 Subsection 37(1)

After “requirements”, insert “, or one or more aspects of one or more requirements,”.

9 After subsection 37(1)

Insert:

- (1A) An exemption in relation to a GEMS determination may be made at any time after the determination is made.

Part 4—Product classes

Greenhouse and Energy Minimum Standards Act 2012

10 Subsection 11(2) (note 1)

Repeal the note.

11 Subsection 11(2) (note 2)

Omit “Note 2”, substitute “Note”.

12 After subsection 11(2)

Insert:

(2A) For the purposes of paragraph (2)(a), a GEMS determination may specify a class of product in any way including, but not limited to, by reference to the following:

- (a) the function the products perform;
- (b) the materials from which the products are manufactured;
- (c) the size or capacity of the products;
- (d) whether the products contain a particular feature or are capable of operating in different modes;
- (e) the intended or expected end use of the products.

13 After paragraph 26(2)(c)

Insert:

; or (d) ensuring that, if the product class is specified by reference to the intended or expected end use of the products, the intended or expected end use is communicated in connection with supplying or offering to supply products in that product class.

Part 5—Requirements in GEMS determinations (other requirements)

Greenhouse and Energy Minimum Standards Act 2012

14 Subsection 27(3)

Repeal the subsection, substitute:

- (3) Requirements may be specified in relation to a product class under paragraph (1)(b) (product performance) or (c) (impact of products on environment or human health) only if:
 - (a) the GEMS determination also specifies GEMS level requirements for the product class; or
 - (b) all of the following apply:
 - (i) the GEMS determination also specifies GEMS labelling requirements for the product class;
 - (ii) the requirements specified under paragraph (1)(b) or (c) enhance the efficacy of the specified GEMS labelling requirements;
 - (iii) the specified GEMS labelling requirements relate to one or more of the matters specified in any of the paragraphs in subsection (2).

Part 6—GEMS Regulator

Greenhouse and Energy Minimum Standards Act 2012

15 Subsections 39(2), 40(2), 43(2), (3) and (4), 46(3) and (4), 47(5) and (6) and 53(1)

Omit “he or she”, substitute “the GEMS Regulator”.

16 Section 69

After “an SES employee”, insert “, or acting SES employee,”.

17 At the end of subsection 70(2)

Add “or acting SES employee”.

18 Subsection 70(3)

After “SES employee”, insert “or acting SES employee”.

19 Section 76 (note)

After “SES employee”, insert “, or acting SES employee,”.

20 Sections 77, 78 and 80

Omit “his or her” (wherever occurring), substitute “the GEMS Regulator’s”.

21 Subsections 87(8), 88(7) and 130(4)

Omit “his or her”, substitute “the GEMS Regulator’s”.

22 Subsection 162(1)

Omit “he or she”, substitute “the GEMS Regulator”.

Part 7—Grandfathering of compliant products

Greenhouse and Energy Minimum Standards Act 2012

23 At the end of subsection 17(2)

Add:

; or (c) the following conditions are satisfied:

- (i) the product is imported into, or the product's last process of manufacture is performed in, Australia at a time (the *earlier time*) before the GEMS determination comes into force;
- (ii) if there is a limited grandfathering period under the GEMS determination for the product class (see section 31)—the supply or offer occurs before the end of that period;
- (iii) all transitional GEMS labelling requirements of the GEMS determination are complied with in supplying or offering to supply the product;
- (iv) the product currently complies with any pre-existing GEMS determination that was in force at the earlier time;
- (v) if there was no such pre-existing GEMS determination—the supply of the product (or an offer to supply the product) in a State or Territory at the earlier time would not have contravened a law of the State or Territory relating to energy use by products, or greenhouse gases resulting from operating products.

24 Subsection 17(7)

Omit “a matter in paragraph (2)(b)”, substitute “the matters in paragraphs (2)(b) and (c)”.

25 Paragraph 17(8)(b)

Omit “a matter in paragraph (2)(b)”, substitute “the matters in paragraphs (2)(b) and (c)”.

26 At the end of subsection 19(2)

Add:

; or (d) the following conditions are satisfied:

- (i) the product is imported into, or the product's last process of manufacture is performed in, Australia at a time (the *earlier time*) before the GEMS determination comes into force;
- (ii) if there is a limited grandfathering period under the GEMS determination for the product class (see section 31)—the use of the product occurs before the end of that period;
- (iii) the product currently complies with any pre-existing GEMS determination that was in force at the earlier time;
- (iv) if there was no such pre-existing GEMS determination—the use of the product for a commercial purpose in a State or Territory at the earlier time would not have contravened a law of the State or Territory relating to energy use by products, or greenhouse gases resulting from operating products.

27 Subsection 19(7)

Omit “a matter in paragraph (2)(c)”, substitute “the matters in paragraphs (2)(c) and (d)”.

28 Paragraph 19(8)(b)

Omit “a matter in paragraph (2)(c)”, substitute “the matters in paragraphs (2)(c) and (d)”.

Part 8—Extension of time to pay fees

Greenhouse and Energy Minimum Standards Act 2012

29 Before paragraph 49(a)

Insert:

- (aa) an amount payable under this Act in relation to the application for the registration is not paid; or

30 Subsection 54(1)

Omit “the GEMS Regulator is satisfied that”.

31 Before paragraph 54(1)(a)

Insert:

- (aa) an amount payable under this Act in relation to the application for the registration is not paid; or

32 Paragraph 54(1)(a)

Before “the model does”, insert “the GEMS Regulator is satisfied that”.

33 Paragraph 54(1)(b)

Before “the registrant”, insert “the GEMS Regulator is satisfied that”.

34 Paragraph 54(1)(c)

Before “any of”, insert “the GEMS Regulator is satisfied that”.

35 Paragraph 54(1)(d)

Before “changes”, insert “the GEMS Regulator is satisfied that”.

36 Paragraph 54(1)(e)

Before “the registrant”, insert “the GEMS Regulator is satisfied that”.

37 After subsection 64(5)

Insert:

- (5A) The GEMS Regulator may, in a particular case or in particular classes of cases, extend the time for payment of the whole or a part of a fee that, at the time when an application under this Part is made, would otherwise be payable in relation to the application, for such period as the GEMS Regulator determines.
- (5B) If the GEMS Regulator, under subsection (5A), extends the time for payment of an amount in relation to an application under this Part:
- (a) the amount is payable accordingly; and
 - (b) despite paragraphs (1)(b) and (1)(c), the application is not required to be accompanied by the amount.

38 Before paragraph 66(1)(a)

Insert:

- (aa) an amount payable under this Act in relation to the application is not paid;

39 Application provisions

- (1) Paragraphs 49(aa) and 54(1)(aa) of the *Greenhouse and Energy Minimum Standards Act 2012* as amended by this Part apply in relation to a registration that results from an application made on or after the commencement of this item.
- (2) Subsections 64(5A) and 64(5B) and paragraph 66(1)(aa) of the *Greenhouse and Energy Minimum Standards Act 2012* as amended by this Part apply in relation to an application made on or after the commencement of this item.

Part 9—Other amendments

Greenhouse and Energy Minimum Standards Act 2012

40 After paragraph 4(aa)

Insert:

- (ab) to facilitate the operation of an intergovernmental scheme involving the Commonwealth and one or more other participating jurisdictions in relation to equipment energy efficiency; and

*[Minister's second reading speech made in—
Senate on 15 June 2023
House of Representatives on 11 September 2023]*

(72/23)
