

EXPLANATORY STATEMENT

Product Emissions Standards Act 2017

Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018

(Issued by authority of the Minister for the Environment and Energy)

The *Product Emissions Standards Act 2017* (the PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health. The *Product Emissions Standards Rules 2017* (the PES Rules) prescribes certain propulsion marine engines and non-road engines as ‘emissions-controlled products’ which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

Subsection 51(1) of the PES Act provides that the Minister may, by legislative instrument, make rules prescribing matters required or permitted by the Act to be prescribed by the rules; or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 46(2) of the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act) provides that goods or laws are exempt for the purposes of a temporary exemption if the goods are of a kind, or the laws are, for the time being declared by or under an Act or regulation of the jurisdiction to be exempt from the operation of the TTMR Act. Subsection 46(3) of the TTMR Act provides that a temporary exemption may be made if it is substantially for the purpose of protecting the health and safety of people or preventing, minimising or regulating environmental pollution in the jurisdiction.

The purpose of the *Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018* (the Rule Amendments) is to amend the PES Rules to:

- temporarily exempt emissions-controlled products from the TTMR Act to ensure the objects of the PES Act can be met prior to a permanent exemption being implemented;
- clarify the relevant regulatory authority and certificates of conformity for the purpose of European Union (EU) certification of propulsion marine engines to ensure that these foreign certified engines are considered certified under the PES Act;
- correct references to ‘propulsion marine engines’ to ensure consistency with the definition in the PES Rules; and
- amend the definition of ‘competition engine’, for the purpose of excluding engines from the definition of emissions-controlled products, to limit it to engines designed solely for use in ‘organised competitions’ to ensure the original policy intent is met.

The Department of the Environment and Energy (the Department) consulted with all jurisdictions participating in the Trans-Tasman mutual recognition arrangements and has worked closely with the Department of Industry, Innovation and Science and the Department of Education and Training, who both administer the TTMR Act, and with Department of Prime Minister and Cabinet.

On 27 November 2017, the then Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP, authorised the Minister for the Environment and Energy to make a permanent exemption under the TTMR Act which was approved by the Prime Minister on 9 February 2018. This authority is also sufficient to cover a temporary exemption. On the same date, the Prime Minister approved a temporary exemption of the PES Rules should there be any delays in putting the permanent exemption in place.

Consultation on the other measures was not undertaken as the amendments are minor, technical corrections and have little to no impact on stakeholders.

Details of the Rule Amendments are set out in the Attachment.

The Rule Amendments are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The whole of this instrument commences on 1 July 2018.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny Act) 2011

Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018

The *Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018* are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018

The *Product Emissions Standards Act 2017* (the PES Act) establishes a national framework to address the adverse impacts of air pollution from certain products on human and environmental health. The *Product Emissions Standards Rules 2017* (the PES Rules) prescribes certain propulsion marine engines and non-road engines as ‘emissions-controlled products’ which must be certified as meeting the Australian emissions standard, or a recognised foreign standard, in order to be imported or supplied in Australia.

The *Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018* (the Rule Amendments) amends the PES Rules to:

- temporarily exempt emissions-controlled products from the *Trans-Tasman Mutual Recognition Act 1997* (the TTMR Act) to ensure the objects of the PES Act can be met prior to a permanent exemption being implemented;
- clarify the relevant regulatory authority and certificates of conformity for the purpose of European Union (EU) certification of propulsion marine engines to ensure that these foreign certified engines are considered certified under the PES Act;
- correct references to ‘propulsion marine engines’ to ensure consistency with the definition in the PES Rules; and
- amend the definition of ‘competition engine’, for the purpose of excluding engines from the definition of emissions-controlled products, to limit it to engines designed solely for use in ‘organised competitions’ to ensure the original policy intent is met.

Human rights implications

The Rule Amendments do not engage with any of the applicable rights or freedoms. The human rights implications associated with the PES Rules and PES Act were considered and outlined in the relevant Statement of Compatibility with Human Rights included with both the Explanatory Memorandum for the PES Act and the Explanatory Statement for the PES Rules. The measures are technical or machinery in nature and therefore do not change the operation of the PES Act or PES Rules in a way which would affect the previous analysis of human rights implications.

Conclusion

The Rule Amendments are compatible with human rights as they do not raise any human rights issues.

The Hon Josh Frydenberg MP, Minister for the Environment and Energy

Details of the *Product Emissions Standards Amendment (Temporary Exemption and Other Measures) Rules 2018*

Section 1 – Name

1. This section provides that the title of the Rules is the *Product Emissions Standards Amendments (Temporary Exemption and Other Measures) Rules 2018* (the Rule Amendments).

Section 2 – Commencement

2. The table in this section provides for the commencement of the Rule Amendments.
3. The whole instrument commences on 1 July 2018.

Section 3 – Authority

4. This section provides that the Rule Amendments are made under the *Product Emissions Standards Act 2017* (the PES Act).

Section 4 – Schedules

5. This section provides that each instrument specified in a Schedule to the Rule Amendments is amended or repealed as set out in the applicable terms in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Items 1 and 2 - Paragraph 9(2)(a) and Paragraph 9(2)(b)

6. Items 1 and 2 ensures that the definition of ‘competition engine’ in section 9 of the *Product Emissions Standard Rules 2017* (the PES Rules) is limited to engines which are designed solely for use in ‘organised competitions’. This ensures that the original policy intent relating to which products are specifically excluded from the definition of ‘emissions-controlled product’ is reflected and ensures consistency with the definition of competition in section 30 of the PES Rules.

Item 3 – Subsection 26(1) (table item 1)

7. Paragraph 10(2)(b) of the PES Act enables the recognition of certifications by foreign regulatory authorities. Emissions-controlled products that have these certifications are able to be imported and supplied to the Australian market without the need for further certification under the Australian certification process.
8. Division 3 of Part 4 of the PES Rules enables the recognition of foreign certification of propulsion marine and non-road engines. In particular, section 26 specifies, for the purposes of paragraph 10(2)(b) of the PES Act, the accepted foreign regulatory bodies and emissions standards recognised for propulsion marine engines and non-road engines.
9. Subsection 26(1), table item 1 of the PES Rules provides for the recognition of certification of propulsion marine engines in the European Union, against the relevant emissions

standard – Directive 2013/53/EU of the European Parliament and of the Council of 20 November 2013 on recreational craft and personal watercraft (the EU Directive).

10. Item 3 repeals table item 1 of subsection 26(1) in order to substitute the Regulatory authority listed in column 2, and the foreign certificate of conformity listed in column 4, for terms which are consistent with the EU Directive.
11. Under the EU Directive, ‘notified bodies’ (rather than ‘an EU approval authority’) have the function of performing conformity assessments and certifying propulsion marine engines as being compliant with the EU Directive. Notified bodies also have the function of issuing certificates of conformity called ‘EC-type examination certificates’ (rather than ‘an EU type-approval certificate’).
12. The amendment clarifies that propulsion marine engines certified by a notified body (within the meaning of the EU Directive) by means of an EC-type examination certificate are considered to be ‘foreign certified’ for the purpose of section 26 of the PES Rules. This ensures that these certified emissions-controlled products can be imported and supplied in Australia.
13. Item 3 also substitutes the reference to ‘marine propulsion engine’ in column 1 with ‘propulsion marine engine’ for the reason set out in paragraph 14 below.

Items 4, 5, and 6 – Subsection 26(1) (cells at table item 2, 3 and 4, column 1)

14. Items 4, 5 and 6 substitute references to ‘marine propulsion engine’ with ‘propulsion marine engine’. This ensures that the emissions-controlled products listed in column 1 of the table in subsection 26(1) are consistent with the titles and definitions of emissions-controlled products in section 7 of the PES Rules.

Item 7 – At the end of the Part 10

15. From 1 July 2018, emissions-controlled products will not be able to be imported or supplied in Australia unless they are certified as meeting either the Australian emissions standard or a foreign emissions standard, or have an exemption under the PES Act.
16. As these products contribute up to 10 per cent of overall air pollutants in Australian urban environments during peak times (which can have human health effects such as respiratory and cardiovascular disease), requiring these products to be certified aims to improve air quality in Australia and provide significant benefits to human health and the environment.
17. Item 7 provides for propulsion marine engines and non-road engines, prescribed as emissions-controlled products under the PES Rules, to be temporarily exempt from the *Trans-Tasman Mutual Recognition Act 1997* (the TTMR Act). This will ensure the objects of the PES Act can be met from 1 July 2018, prior to a permanent exemption being implemented.
18. The TTMR Act gives effect to mutual recognition principles, agreed upon between the Commonwealth of Australia, the States and Territories of Australia and the Government of New Zealand, relating to the sale of goods and the registration of occupations. It provides that a good that can be legally sold in Australia may be sold in New Zealand and vice versa. The TTMR Act also provides for temporary and permanent exemptions where the mutual recognition principle will not apply.

19. New Zealand does not have legislation regulating the supply and import of emissions-controlled products. Without an exemption, uncertified engines could be imported or supplied in Australia.
20. As a permanent exemption is not able to be implemented by 1 July 2018, item 7 provides for a temporary exemption to ensure that the objects of the PES Act can be met during this interim period. Item 7 also meets the requirements subsection 46(3) of the TTMR Act as it is substantially for the purpose of protecting the health and safety of people or preventing, minimising or regulating environmental pollution.
21. Item 7 also provides for its own repeal when the permanent exemption commences or the end of the 12 month period for which the temporary exemption can operate, whichever occurs first. The explanatory note clarifies that pursuant to subsection 46(4) of the TTMR Act, the temporary exemption can operate for a maximum of 12 months. This reflects the Department's policy intent that the temporary exemption in item 7 is an interim measure until the permanent exemption commences.