

## **EXPLANATORY STATEMENT**

*Trans-Tasman Mutual Recognition Act 1997*

*Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulations 2019*

(Issued by authority of the Minister for the Environment)

The *Trans-Tasman Mutual Recognition Act 1997* (the TTMR Act) implements mutual recognition principles between Australia and New Zealand relating to the sale of goods and the registration of occupations. In respect of goods, a good that can be legally sold in Australia may be sold in New Zealand and vice versa. The TTMR Act also provides for circumstances where the mutual recognition principle will not apply. These circumstances are covered by provisions for exclusions, permanent exemptions, special exemptions and temporary exemptions.

The purpose of the *Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulation 2019* (the Regulations) is to permanently exempt propulsion marine engines and non-road spark ignition engines, prescribed as emissions-controlled products in Rules made under the *Product Emissions Standards Act 2017* (the PES Act), from the operation of the TTMR Act. The PES Act regulates emissions from these engines to address the adverse impacts of air pollution on human and environmental health.

Under the PES Act, propulsion marine engines and non-road spark ignition engines are not able to be imported or supplied in Australia unless they are certified as meeting either the Australian emissions standard or an accepted foreign emissions standard, or have been granted an exemption. New Zealand does not have similar emissions standards legislation regulating the supply and import of emissions-controlled products. Therefore, without an exemption under the TTMR Act, uncertified engines that can be imported and supplied in New Zealand, can legally be imported or supplied in Australia, even if they do not comply with the emissions standards prescribed under the PES Act.

Section 45 of the TTMR Act sets out the circumstances in which a permanent exemption may be made under the Act. Permanent exemptions are set out at Schedule 2 to the Act. Subsection 45(3) provides that the Governor-General may make regulations amending Schedule 2.

Subsection 45(4) of the TTMR Act provides that a regulation may not be made unless all participating jurisdictions have endorsed the regulation. Section 43 provides that a jurisdiction endorses a regulation by publishing a notice endorsing the terms of the regulations in the jurisdiction's official gazette and that the making of a recommendation by the Minister to the Governor-General for the making of the regulation constitutes the Commonwealth's endorsement. All jurisdictions have met this condition in respect of these Regulations.

The Department of the Environment and Energy (the Department) consulted with all jurisdictions participating in the Trans-Tasman mutual recognition arrangements. Consultation with those affected by the import and supply restrictions occurred during the development of the PES Act and PES Rules.

On 27 November 2017, the then Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP, authorised the then Minister for the Environment and Energy, the Hon Josh Frydenberg MP, to progress a permanent exemption under the TTMR Act.

On 9 February 2018, the then Prime Minister wrote to all participating jurisdictions requesting their endorsement. Approval from all participating jurisdictions, including New Zealand, was received. Following this, on 19 October 2018, the Minister for the Environment, the Hon Melissa Price MP, wrote to all participating jurisdictions requesting that they place an official notice in their respective government gazettes endorsing the Regulations. All participating jurisdictions have completed the gazettal process allowing the Commonwealth to finalise the Regulations.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the day after registration.

Authority: Subsection 45(3) of the *Trans-Tasman Mutual Recognition Act 1997*

## Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*  
***Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulations 2019***

These Regulations 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 Legislative Instrument

The *Trans-Tasman Mutual Recognition Act 1997* (the TTMR Act) implements mutual recognition principles between Australia and New Zealand relating to the sale of goods and the registration of occupations. In respect of goods, a good that can be legally sold in Australia may be sold in New Zealand and vice versa. The TTMR Act also provides for circumstances where the mutual recognition principle will not apply. These circumstances are covered by provisions for exclusions, permanent exemptions, special exemptions and temporary exemptions. Permanent exemptions are set out in a Schedule to the TTMR Act.

The purpose of the *Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulations 2019* (the Regulations) is to permanently exempt propulsion marine engines and non-road spark ignition engines, prescribed as emissions-controlled products in Rules made under the *Product Emissions Standards Act 2017* (the PES Act), from the operation of the TTMR Act. The PES Act regulates emissions from these engines to address the adverse impacts of air pollution on human and environmental health.

Under the PES Act, propulsion marine engines and non-road spark ignition engines are not able to be imported or supplied in Australia unless they are certified as meeting either the Australian emissions standard or an accepted foreign emissions standard, or have been granted an exemption. New Zealand does not have similar emissions standards legislation regulating the supply and import of emissions-controlled products. Therefore, without an exemption under the TTMR Act, uncertified engines could be imported and supplied in Australia, even if they did not comply with the emissions standards prescribed under the PES Act.

### Human rights implications

The Regulations do not engage any of the applicable rights or freedoms. The human rights implications associated with the TTMR and PES Acts were considered and outlined in the relevant Statements of Compatibility with Human Rights included with the explanatory documents for the relevant bills when they were introduced. The measures are technical in nature and do not change the operation of the PES or TTMR Acts in a way which would affect the previous analysis of human rights implications.

### Conclusion

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

**The Hon Melissa Price MP**  
**Minister for the Environment**

**Details of the *Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulations 2019***

**Section 1 – Name**

This section provides that the title of the Regulations is the *Trans-Tasman Mutual Recognition Amendment (Permanent Exemption for Emissions-controlled Products) Regulations 2019* (the Regulations).

**Section 2 – Commencement**

The table in this section provides for the commencement of the Regulations.

The whole instrument commences on the day after registration.

**Section 3 – Authority**

This section provides that the Regulations are made under the *Trans-Tasman Mutual Recognition Act 1997* (the TTMR Act).

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the Regulations is added 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**

**Item 1 – Clause 3 of Schedule 2 (at the end of the table)**

The *Product Emissions Standards Rules 2017* (the PES Rules) prescribes propulsion marine engines and non-road spark ignition engines as emissions-controlled products. As of 1 July 2018, emissions-controlled products will not be able to be imported or, if manufactured in Australia, first supplied unless they are certified as meeting either the Australian emissions standard or an accepted foreign emissions standard, or have an exemption under the *Product Emissions Standards Act 2017* (the PES Act). From 1 July 2019, all emissions-controlled products must be certified or have an exemption, regardless of the type of supply or origin of manufacture.

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.

Item 1 adds the *Product Emissions Standards Rules 2017*, to the extent that they deal with emissions-controlled products that are propulsion marine engines or non-road engines to the end of the table in Clause 3 of Schedule 2 of the TTMR Act.

This permanently exempts propulsion marine engines and non-road spark ignition engines from the operation of the TTMR Act. This ensures that propulsion marine engines and non-

road spark ignition engines which do not meet the emissions standards prescribed under the PES Rules cannot be imported or supplied in Australia. This supports the objects of the PES Act which is to address the adverse impacts of air pollution on human and environmental health from these engines.