

EXPLANATORY STATEMENT

Issued by the Authority of the Greenhouse and Energy Minimum Standards Regulator

Greenhouse and Energy Minimum Standards Act 2012

*Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services)
Instrument 2019*

Purpose and Operation

The *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act) requires models of products that are covered by a Greenhouse and Energy Minimum Standards determination to be registered and provides offences for the supply, offer to supply or use for commercial purposes of GEMS products that are not registered.

Under section 41 of the GEMS Act, a person may apply to the GEMS Regulator to register in relation to a product class:

- (a) a single model of GEMS products, specified in the application; or
- (b) 2 or more models of GEMS products, specified in the application, that are in the same family of models.

Under section 46(1) of the Act, a person may apply to the GEMS Regulator to vary an existing registration in order to add additional product models in the same family of models.

Registrants may also wish to submit a test report in relation to an existing registered product in circumstances where a replacement GEMS determination (see section 11 of the Act) specifies a revised test method. This will support compliance with the requirements of the relevant determination for the purposes of continuing registration under the replacement determination (see section 36 of the Act) and the accuracy of the information contained in the GEMS Register kept under section 40 of the Act. This assessment by the GEMS Regulator will assist registrants and consumers by facilitating reliable use of updated product labelling provided for under replacement determinations.

Section 77 of the Act enables the GEMS Regulator to charge fees for services provided in the performance of his or her functions. Such fees are different to those charged under the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*, which relate to the fee payable to register a product under section 41 of the Act and specifically recover the costs of registering products and monitoring compliance.

This instrument specifies fees for the GEMS Regulator varying a registration to add an additional model in the same family, and updating a registration with a new test report. Both of the services identified in this instrument require the assessment of documentation against specified requirements. The fee specified for both of these services is \$210.00. This amount is based on the costs incurred by the GEMS Regulator in the assessment aspect of processing a registration application made under section 41 of the GEMS Act, and includes an additional amount to cover the costs of the expected volume and complexity of enquiries in relation to these services. The fees are commensurate with the costs that would be incurred by the Regulator to carry out the services covered by this instrument.

Consultation

The Australian Government conducted extensive consultation with Australian businesses throughout the development of the GEMS Act. The Australian Government also consulted with the governments of New Zealand and Australian states and territories, who were all involved in transferring the then twenty-year old E3 Program to the new framework.

One component of the consultation process was to address registration fees to recover registration and compliance monitoring costs, and this included fees for adding additional models to an existing registration. Australian businesses provided strong support for fees to recover these costs on the understanding that it would assist the GEMS Regulator to improve registration and compliance monitoring services.

Recent consultation processes on revised GEMS requirements for air conditioners, household refrigerating appliances, and commercial refrigerated cabinets all included discussion of the ability to update registrations with new test reports where a new test methodology was imposed. Industry stakeholders supported this approach, on the assumption that the fee would reflect the assessment costs only, over the alternative which was to require new registrations and the payment of the full registration fee in all cases.

Authority

Subsection 77(1) of the *Greenhouse and Energy Minimum Standards Act 2012* permits the GEMS Regulator to charge fees for services provided by, or on behalf of, the GEMS Regulator in the performance of his or her functions. The GEMS Regulator functions covered by this instrument are referenced in Schedule 1.

This Instrument also relies upon subsection 33(3) of the *Acts Interpretation Act 1901* as the basis for revoking the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument 2017*. Subsection 33(3) provides that, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

Detailed description of provisions in the Instrument

Part 1 Preliminary

1 Name of instrument

Section 1 sets out the name of the instrument.

2 Commencement

Section 2 provides for the commencement of the instrument.

3 Revocation

Section 3 provides that the instrument revokes the *Greenhouse and Energy Minimum Standards (Variation of a Model's Registration – Application Fees) Instrument 2014*.

4 Purpose

Section 4 sets out the purpose of the instrument, which is to specify the fees payable for services provided by the GEMS Regulator that are identified in the instrument.

5 Power

Section 5 provides that subsection 77(1) of the GEMS Act is the legislative power under which this instrument is made. Subsection 77(1) enables the GEMS Regulator to charge fees for services provided by, or on behalf of, the GEMS Regulator in the performance of his or her functions.

6 Interpretation

Section 6 clarifies that any terms in the instrument that are defined in the GEMS Act have the same meaning, unless otherwise specified.

7 Application

Section 7 sets out that the instrument applies to the services identified in Schedule 1.

Part 2 Fees

8 Fees

Section 8 provides that the GEMS Regulator services for which fees are payable, and the applicable fee, are specified in Schedule 1.

Schedule 1

Schedule 1 identifies the relevant GEMS Regulator services, and the applicable fee, in tabular form. The identified services are:

- an application to vary a registration to cover additional models (Act section 46); and
- assessment of a test report for a registered product, for the purposes of maintaining the GEMS Register, where a new test method has been specified in a new determination (Act section 40).

Statement of Compatibility with Human Rights

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

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This Legislative Instrument is 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 *Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services) Instrument 2019* specifies the fees that must be paid when a person applies to the GEMS Regulator to vary an existing registration in relation to the relevant product class to cover one or more additional models of GEMS products, or to submit a new test report for a registered product where a new test method has been specified. The fees do not materially alter the obligations imposed under the Act or impinge on human rights issues.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.