

EXPLANATORY STATEMENT

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

Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012

Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2020

Purpose and Operation

The *Greenhouse and Energy Minimum Standards Act 2012* requires models of products that are covered by a Greenhouse and Energy Minimum Standards (GEMS) Determination to be registered and provides offences for supply or commercial use of GEMS products that are not registered. A person may apply for registration under section 41 of the Act. Registration ensures that the GEMS Regulator can identify which products are being sold in Australia, to assist monitoring of compliance with the Act and ascertain trends in product energy efficiency.

Section 8 of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* permits the GEMS Regulator to specify fees, by legislative instrument, which must be paid when a person applies to register a product under section 41 of the *Greenhouse and Energy Minimum Standards Act 2012*.

Registration fees assist the GEMS Regulator to recover a portion of the costs incurred in registering products under, and to monitor compliance with, the GEMS legislation. Cost recovery assists the GEMS Regulator to deliver improved registration and compliance monitoring services, for the benefit of regulated Australian businesses and the Australian public.

The *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2020* (the Instrument) specifies the fees for each regulated product class that must be paid when a person applies to register a model of a regulated product. A new instrument was required to reflect the making and registration of a replacement GEMS Determination to ensure that the registration fee for the products covered by it was properly set, and the revocation of two other GEMS Determinations. No changes were made to the registration fees themselves.

- The replacement GEMS Determination was the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2020*.
- The revoked GEMS Determinations were:
 - the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019*; and
 - the *Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2013*.

Authority

Section 8 of the Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012 permits the GEMS Regulator to specify fees, by legislative instrument, which must be paid when a person applies to register a product under section 41 of the Greenhouse and Energy Minimum Standards Act 2012.

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.

Consultation

The Australian Government conducted extensive consultation with Australian businesses throughout the development of the *Greenhouse and Energy Minimum Standards Act 2012*, as well as consulting with the governments of New Zealand and Australian states and territories, all of which participate in the over twenty-year old Equipment Energy Efficiency Program.

Consultation specifically addressed registration fees to recover registration and compliance monitoring costs. 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.

This Instrument updates the references to GEMS Determinations in the schedule of fees only, with no change to the specified fee for any of the regulated product classes, and consequently further consultation was not considered necessary.

Regulatory Impact

There will be no additional regulatory burden arising from the Instrument. The changes made in this Instrument are consequential to the processes related to the making and revocation of the GEMS Determinations noted above, which were the subject of comprehensive COAG Regulation Impact Statements approved by the Office of Best Practice Regulation.

Detailed description of provisions in the Instrument

Part 1 Preliminary

1 Name of Instrument

Section 1 sets out the title of the Instrument as the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2020*.

2 Commencement

Section 2 sets out the commencement arrangements for the Instrument, which commences on the day after it is registered on the Federal Register of Legislative Instruments.

3 Revocation

Section 3 revokes the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 2) 2019*.

4 Object

Section 4 sets out the object of the Instrument, which is to specify registration fees payable when a person applies to register a product under the *Greenhouse and Energy Minimum Standards Act 2012*.

5 Interpretation

Section 5 clarifies that any terms in the Instrument that are defined in the *Greenhouse and Energy Minimum Standards Act 2012* or the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* have the same meaning, unless otherwise specified.

Part 2 Fees

6 Fees

Consistent with paragraph 9(1) (a) of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*, the Instrument specifies the amount for each registration fee.

Section 6 specifies fees in a Schedule to the Instrument. The table in the Schedule lists four fee bands (Column 1), sets the amount of the fee for each fee band (Column 2) and specifies which of the fee bands (listed in Column 1) apply to applications to register products against the relevant GEMS Determination (listed in Column 3).

The Schedule has been amended to reflect:

- the making and registration of the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2020* (commencing on 1 May 2021); and
- the revocation of:
 - the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019* (revoked by the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets Revocation) Instrument 2020* made on 5 August 2020); and
 - the *Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2013* (revoked with the commencement of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019* on 1 April 2020).

For the period until the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2020* commences, both it and the GEMS Determination it will revoke upon commencement are required to appear in the Instrument, as the *Greenhouse and Energy*

Minimum Standards Act 2012 provides that a registrant may elect to register a GEMS product against either the old or new determination during this period.

The amount of the fee for each product type was calculated with reference to identified costs of registration staff and the registration system, as well as costs incurred in the inspection and monitoring program, such as purchasing and testing equipment. Relevant costs may be reassessed periodically throughout the life of the *Greenhouse and Energy Minimum Standards Act 2012* to ensure that fees represent an appropriate level of cost recovery.

Statement of Compatibility with Human Rights

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

Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2020

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 (Registration Fees) Instrument (No. 1) 2020* specifies fees payable in relation to each class of product regulated by the *Greenhouse and Energy Minimum Standards Act 2012* (the Act). The fees must be paid when a person applies to have a product registered under section 41 of the Act. Registration fees will recover a portion of the costs incurred in registering products and monitoring compliance under the Act, assisting the GEMS Regulator to deliver improved registration and compliance monitoring services. The fees do not materially alter the obligations imposed under the Act or engage any of the relevant rights or freedoms.

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.

Shane Gaddes
GEMS Regulator