

## 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 (Exemption) Instrument (No. 1) 2021*

### **Purpose and operation**

Section 37 of the *Greenhouse and Energy Minimum Standards Act 2012* (the **Act**) enables the Greenhouse and Energy Minimum Standards (**GEMS**) Regulator, by legislative instrument, to exempt models of GEMS products from one or more requirements of a GEMS determination in relation to all or specified supplies or uses of products of that model, and enables the GEMS Regulator to specify conditions to which the exemption is subject. GEMS determinations are defined in section 11 of the Act.

Section 37 also provides that regulations may be made in order to provide a framework for administrative processes around the submission and assessment of applications for exemption. Division 4.1 of the *Greenhouse and Energy Minimum Standards Regulation 2012* (the **Regulation**) sets out the circumstances in which the GEMS Regulator may exempt a model of a GEMS product from the requirements of a GEMS determination.

The purpose of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No.1) 2021* (the **Instrument**) is to exempt the specified dish drawer dishwashers supplied by Fisher and Paykel Australia Pty Ltd (**F&P**) from the requirement to use the detergent prescribed in section 2 of AS/NZS 2007.2:2005 for conducting tests as required under subsection 7(3) of the *Greenhouse and Energy Minimum Standards (Dishwasher) Determination 2015* (the **Determination**), and instead require the use of the IEC D detergent formulation.

Subsection 7(3) of the Determination sets out the requirements for conducting tests in relation to household dishwashers for the purposes of paragraph 26(1)(c) of the Act. Under subsection 7(3), the test requirements are those contained in section 2 of AS/NZS 2007.2:2005, subject to the modifications set out in paragraphs 7(3)(a) to (d). F&P sought an exemption to the test requirements insofar as they relate to the required detergent formulation for testing because it causes excessive foaming in their drawer style of dishwasher, which would necessitate significant amendment to the wash cycle (that is, a reduction in the contact time of the detergent from 40 to 12 minutes).

F&P sought to instead use the IEC D detergent formulation because this will not cause excessive foaming and is more similar to quality detergents that are commercially available to consumers. Further, the IEC D detergent formulation is already specified by other international regulators and is anticipated to be prescribed in AS/NZS2007.1 when it is updated in 2021.

The GEMS Regulator considered all the matters set out in the Regulation and has decided to grant the exemption requested by F&P, noting that the exemption will have a negligible impact on Australia's greenhouse gas emissions.

Models covered by exemptions must still be registered under the Act.

## **Authority**

Section 37 of the Act enables the GEMS Regulator to exempt models of GEMS products from one or more requirements of a GEMS determination. An exemption can be in relation to all supplies or uses of products of that model or limited to specified supplies and uses. The GEMS Regulator can specify conditions to which the exemption is subject.

Division 4.1 of the Regulation sets out the circumstances in which the GEMS Regulator may exempt a model of a GEMS product from the requirements of a GEMS determination.

## **Material incorporated by reference**

The AS/NZS 2007.2:2005 and IEC 60436:2015 standards are incorporated by reference in this Instrument. These standards are incorporated as they existed at the time the Instrument was made. There is no power in the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act) that allows for the incorporation of documents as in force from time to time.

Manufacturers of products covered by an exemption instrument made under the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act) are expected to purchase any referenced standards in order to comply with the requirements and/or conditions imposed by the Instrument.

Interested, non-commercial users can access referenced standards for free, through the Standards Australia Distribution and Licensing Policy Framework, published in November 2019. The Framework provides access to Australian Standards to the general public in physical library reading rooms for personal, domestic and household use. Standards Australia has also committed to funding and providing access by other means, anticipated to be delivered online and provided directly by Standards Australia, by no later than December 2023.

The Department of Industry, Science, Energy and Resources (Department) continues to engage with Standards Australia while this work is underway, regarding options for non-commercial users to access standards incorporated in instruments made under the GEMS Act without charge. During this period, interested non-commercial users may also be able to access standards without cost through the National Library of Australia (including via interlibrary loans).

Where requests to view standards are received from non-commercial users, the Department will work with the requesting party to provide appropriate access to the standards referenced in the Instrument, and any other standards referenced under the GEMS Act, on a case-by-case basis.

## **Consultation**

The exemption set out in the Instrument was considered on application from the applicant.

## **Regulatory Impact**

There will be no regulatory burden arising from the Instrument. The OBPR has advised that such proposals are not likely to have a regulatory impact on business, community organisations or individuals, and therefore the preparation of a Regulation Impact Statement is not required.

## Detailed description of provisions in the Instrument

### 1. Name

Section 1 specifies the name of the Instrument as the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 1) 2021*.

### 2. Commencement

Section 2 provides that the Instrument commenced on the day after it is registered.

### 3. Authority

Section 3 sets out the provision of the Act under which the Instrument is made.

### 4. Definitions

Section 4 sets out definitions of terms used in the Instrument. The term '*exempt model*' is defined in section 5 of the Instrument.

### 5. Exemption

Section 5 exempts the models specified in clause 1 of Schedule 1 to the Instrument (the *exempt models*) from the requirements specified in clause 2 of Schedule 1.

### 6. Conditions of exemption

Section 6 provides that the conditions specified for the purposes of subsection 37(2) of the Act are set out at clause 4 of the Schedule. The purpose of the conditions is to minimise the negative effects on Australia's greenhouse gas emissions of granting the exemption, while delivering a reasonable outcome for the applicant.

## Schedule 1 – Exemption

Schedule 1 to the Instrument sets out the following terms:

- the specified *exempt models*, including model numbers, product descriptions and the number of units covered by the Instrument (clause 1);
- the requirements of the Determination from which the models are exempt (clause 2);
- the supplies to which the exemption applies (clause 3); and
- the conditions to which the exemption is subject (clause 4).

## **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 (Exemption) Instrument (No. 1) 2021*

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 (Exemption) Instrument (No. 1) 2021* specifies models of Greenhouse and Energy Minimum Standards (GEMS) products that the GEMS Regulator has exempted from the requirement to use a detergent prescribed in the relevant standard, referenced in the *Greenhouse and Energy Minimum Standards (Dishwasher) Determination 2015*. A condition of this exemption is that the detergent IEC D specified in Annex E of the international standard *IEC 60436:2015 Electric dishwashers for household use - Methods for measuring the performance (Edition 4)* must instead be used for testing.

### **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.

**Penny Sirault**

**GEMS Regulator**