

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. 2) 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.2) 2021* (the **Instrument**) is to exempt supplies by Hewlett Packard Australia Pty Ltd, trading as Hewlett Packard Enterprise (**HPE**) of a specified computer server from the minimum energy performance standard (**MEPS**) requirement relating to the standby (off) power mode consumption (**standby MEPS requirements**) set out in section 6(1)(b) of the *Greenhouse and Energy Minimum Standards (Computers) Determination 2013* (the **Determination**).

HPE sought an exemption for its ProLiant MicroServer Gen10 Plus (Gen10 Plus), a small-scale computer server, from the standby MEPS requirements. The remote management capabilities of the server, which remains on even when the server is in standby mode, makes it difficult for this server to comply with the standby MEPS requirements.

The GEMS Regulator considered all the matters required to be considered under reg 4.1.5 of the Regulation, and other matters that may be considered under reg 4.16 of the Regulation, and has decided to grant the exemption requested by HPE. While the units do not meet the standby MEPS requirements in relation to standby (off mode) power consumption, the GEMS Regulator is satisfied that the negative impact on Australia's greenhouse gas emissions as a result of the exemption will not be significant. This is because the projected sales of the Gen10 Plus is not considered to be large as it would be for a niche market. Additionally, this market is not expected to grow significantly.

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 5813.2:2012 standard is incorporated by reference in this Instrument. This standard is incorporated as it 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 know what requirements do not apply as a result of the exemption, and what requirements continue to apply under the GEMS determination to which the exemption relates.

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 continues to engage with Standards Australia while this work is underway about 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. Consultation was undertaken with the applicant for the purpose of clarifying the exemption application.

Regulatory Impact

There will be no regulatory burden arising from the Instrument. The Office of Best Practice Regulation (**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. 2) 2021*.

2. Commencement

Section 2 provides that the Instrument commences 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.

Schedule 1 – Exemption

Schedule 1 to the Instrument sets out the following:

- the specified *exempt model*, including the model number, product description and the number of units covered (if relevant) by the Instrument (clause 1);
- the requirements of the Determination from which the model is exempt (clause 2);
- the supplies to which the exemption applies (clause 3).

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. 2) 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. 2) 2021* specifies models of Greenhouse and Energy Minimum Standards (GEMS) products that the GEMS Regulator has exempted from the requirements of section 6(1)(b) of the *Greenhouse and Energy Minimum Standards (Computers) Determination 2013*.

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.

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GEMS Regulator