

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 (Authorisation Requirements for Testing GEMS Products) Instrument 2021

Purpose and operation

The *Greenhouse and Energy Minimum Standards Act 2012* (the **Act**) establishes the position of the Greenhouse and Energy Minimum Standards (GEMS) Regulator, who is responsible for monitoring and enforcing compliance with the Act.

Part 7 Division 8 of the Act deals with the powers of the GEMS Regulator to appoint persons to test, examine or sample GEMS products to determine whether the products, or models of the products, comply with the Act including any relevant GEMS determination.

The object of this instrument is to specify, for the purposes of section 125 of the Act, the requirements that must be satisfied for persons to be authorised to test GEMS products under section 125 of the Act.

Testing enables the GEMS Regulator to verify the performance of individual product models in laboratory conditions to determine if they meet GEMS requirements and the claims of manufacturers and suppliers.

Authority

Section 125 of the Act permits the GEMS Regulator to authorise persons to test GEMS products in a product class for the purpose of determining whether a GEMS product or model of GEMS products in that product class complies with a provision of the Act including any relevant GEMS determination.

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 (Authorisation Requirements for Testing GEMS Products) Instrument 2013*. 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 consultations with Australian businesses throughout the development of the Act, as well as consulting with the governments of New Zealand and Australian states and territories. The Act established a national approach to setting greenhouse and energy minimum standards, replacing separate state and territory legislation.

Consultation on section 125 and the *Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2013* was considered unnecessary at the time, as the arrangements reflected long standing practice under previous state and territory legislation. No issues were raised in relation to section 125 during the consultation process on the Act.

Consultation on this Instrument was also considered unnecessary, as it corrects a technical deficiency in the previous instrument in relation to a referenced standard, and does not change any substantive requirements.

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 establishes the title of the instrument as the *Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2021*.

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 sets out that this instrument revokes the *Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2013*.

4. Authority

This instrument is made under section 125 of the *Greenhouse and Energy Minimum Standards Act 2012*.

5. Requirements

Section 5 sets out the specific accreditation requirements that must be satisfied for persons to be authorised to test products under section 125 of the *Greenhouse and Energy Minimum Standards Act 2012*. Persons appointed to test, examine or sample GEMS products must hold accreditation by either the National Association of Testing Authorities, Australia or another body that is a signatory to either: the Asia Pacific Accreditation Cooperation (APAC) Mutual Recognition Arrangement; or the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement.

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 (Authorisation Requirements for Testing GEMS Products) Instrument 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 (Authorisation Requirements for Testing GEMS Products) Instrument 2021* specifies the requirements that must be satisfied for persons to be authorised to test GEMS products under section 125 of the *Greenhouse and Energy Minimum Standards Act 2012*.

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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