

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister to the Minister for Industry, Energy and Emissions Reduction

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Revocation Instrument 2022

Purpose and Operation

The *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2020* (the Determination) was made on 9 December 2020 to introduce minimum energy efficiency requirements, and associated requirements for conducting tests, for air conditioners above 65 kilowatts (kW) rate capacity. It was due to commence on 1 April 2022.

Following representations from a significant number of air conditioning stakeholders regarding the impact of COVID-19 on supply chains and consequently the stakeholders' ability to have all of their products registered against the Determination by the current commencement date of 1 April 2022, the Government agreed to delay the commencement of the requirements until 1 October 2022 to allow time for these issues to be overcome. The *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Revocation Instrument 2022* (the Instrument) revokes the Determination and a new *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2022* will be registered with the revised commencement date.

Subsection 35(5) of the *Greenhouse and Energy Minimum Standards Act 2012* (the Act) provides that Subsection 33(3) of the *Acts Interpretation Act 1901* (which deals with the variation and revocation of instruments) does not apply in relation to a Greenhouse and Energy Minimum Standards (GEMS) determination. As a result, a GEMS determination may not be amended or varied to change the commencement date. Instead, it must be revoked and a new GEMS determination made with the revised commencement date. It is necessary to revoke the Determination in a separate instrument because the revocation and replacement would be required to commence on different dates.

Accordingly, the Instrument is necessary to revoke the Determination for the purpose identified above.

Authority

Subsection 35(3) of the Act provides that the Minister may, by legislative instrument, revoke a GEMS determination without making a replacement determination. To exercise this power, the Minister has obtained consent from participating jurisdictions in accordance with the agreement referred to in paragraph 33(3)(a) of the Act.

Consultation

The Instrument was prepared in response to representations from industry stakeholders regarding the impact of COVID-19 on international shipping and therefore their ability to import and produce models that are compliant with the new minimum energy performance standards (MEPS).

State and Territory agreement was sought from Energy Senior Officials to delay the commencement of the new MEPS to 1 October 2022. The agreement of States and Territories is required by the Act for revoking a determination or creating a new determination. Jurisdictions have provided their support to revoke the existing Determination and commencing the new Determination on 1 October 2022.

Regulatory Impact

There will be no additional regulatory burden arising from the Instrument. As noted above, the purpose of the Instrument is to facilitate a delay in the commencement of new minimum energy efficiency requirements for air conditioners above 65kW, which were covered by a comprehensive Council of Australian Governments (COAG) Decision Regulatory Impact Statement (RIS) related to the 2020 Determination. This RIS process was assessed by the Office of Best Practice Regulation as meeting COAG's best practice regulation requirements.

Details of the Instrument are set out at [Attachment A](#). A statement of compatibility with human rights is provided at [Attachment B](#).

Detailed description of provisions in the Instrument

Part 1—Preliminary

1 Name

Section 1 sets out the title of the Instrument as the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Revocation Instrument 2022*.

2 Commencement

Section 2 sets out the commencement arrangements for the Instrument, which commences on the day after it is registered.

3 Authority

Section 3 provides that the Instrument is made under section 35 of the Act.

4 Definitions

Section 4 provides a definition for the term ‘air conditioners above 65kw determination’, which is defined to mean the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2020*.

Part 2—Revocation

5 Revocation

Section 5 provides that the Instrument revokes the air conditioners above 65kW determination. The intended effect of this section is that the air conditioners above 65kW determination never comes into force. This structure means that no one will be in breach of obligations in the Act with respect to the revoked determination and enables the commencement of the substantive obligations to be delayed.

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 (Air Conditioners above 65kW) Revocation Instrument 2022

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 (Air Conditioners above 65kW) Revocation Instrument 2022* revokes the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2020* (the Determination). The purpose of the revocation is to allow for a substantially similar Determination with a later commencement date to be introduced. This provides air conditioning stakeholders with more time to overcome supply chain challenges caused by COVID-19 which have impacted their ability to register all of their products against the Determination before 1 April 2022. The revocation does 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.

Tim Wilson

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