

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) 2022

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 costs associated with performing functions under 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) 2022* (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 new GEMS Determination and to ensure that the registration fee for the products covered by it was properly set. No changes were made to the existing registration fees.

The new GEMS Determination was the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2022*. This Determination delayed the commencement date of the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) 2020*.

The Determination was made to delay the commencement date of requirements from 1 April 2022 to 1 October 2022 due to representations made by industry that there were significant transport delays due to the COVID-19 pandemic that significantly impacted their ability to have their new compliant products available by the original commencement date.

Further details of the Legislative Instrument are set out at **Attachment A**.

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 (No. 1) 2021*. 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.

The Australian Government worked extensively with industry and other stakeholders on the development of the requirements for air conditioners over 65kW specified in the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2022*, including on registration matters. This Instrument updates the references to GEMS Determinations in the schedule of fees to include the new Determination, and sets the corresponding fee to be Fee Band 3. Consequently further consultation was not considered necessary.

Regulatory Impact

A comprehensive Decision Regulatory Impact Statement (RIS) was prepared for air conditioners above 65kW following the completion of a Consultation RIS process. The Office of Best Practice Regulation assessed the RIS as meeting the former Council of Australian Governments' (COAG) best practice regulation requirements.

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 of the GEMS Determinations noted above, which were the subject of comprehensive COAG Regulation Impact Statements approved by the Office of Best Practice Regulation (OBPR). OBPR has advised a RIS is not required for this proposal (OBPR21-01246).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**

Detailed description of provisions in the Instrument

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) 2022*.

2 Commencement

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

3 Authority

Section 3 sets out the authority for the Instrument, being section 8 of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*.

4 Interpretation

Subsection 4(1) 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.

Subsection 4(2) clarifies that the descriptions in Column 4 of Schedule 2 are a generic description of products covered by the GEMS Determinations listed in Column 3 of Schedule 2. They are provided for reference only.

5 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 5 specifies fees in Schedule 2 to the Instrument. 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.

6 Schedules

Subsection 6(1) specifies that each instrument that is specified in Schedule 1 to the Instrument is amended or repealed as set out in that Schedule.

Subsection 6(2) specifies that Schedule 2 sets out the registration fees payable in accordance with section 5 of the Instrument.

Schedule 1 – Repeals

Schedule 1 specifies that the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2021* is repealed.

Schedule 2 – Fees payable

The table in Schedule 2 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).

Schedule 2 has been amended to reflect the making of the *Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2022*.

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) 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 (Registration Fees) Instrument (No. 1) 2022* (the Legislative Instrument) 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 Greenhouse and Energy Minimum Standards 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.

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