

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) 2022

Purpose and Operation

Subsection 37(1) of the *Greenhouse and Energy Minimum Standards (GEMS) Act 2012 (Act)* provides that the GEMS Regulator may, by legislative instrument, in accordance with regulations made for the purposes of subsection 37(1), exempt specified 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. The GEMS Regulator may specify conditions to which the exemption is subject in accordance with subsection 37(2) of the Act. A GEMS determination is defined in section 11 of the Act.

Division 4.1 of the *Greenhouse and Energy Minimum Standards Regulation 2012 (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) 2022 (Instrument)* is to exempt supplies of Braemar-branded Seeley International Pty Ltd (Seeley) products specified in Schedule 1, clause 1 of the Instrument from the GEMS level requirements contained in Part 3 of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019 (2019 Determination)*.

Seeley sells Braemar-branded air conditioner models. The specified Braemar-branded models were previously registered against the 2019 Determination through the operation of subsection 36(2) of the Act. The specified Braemar-branded models are no longer being imported into Australia. Seeley requested an exemption to enable supply of remaining units of the specified Braemar-branded models, without the significant costs of undertaking additional tests.

The GEMS Regulator considered all the matters set out in the Regulation and has decided to grant an exemption from the GEMS level requirements in the 2019 Determination, on the basis there is no negative impact on Australia's greenhouse gas emissions as a result of the exemption. This view is formed due to the fact that the specified Braemar-branded models previously held approved GEMS registrations and there was no change to the relevant testing requirements when the 2019 Determination replaced the *Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2013*. The exemption is also time-limited to the anticipated timeframes for supply of the existing stock.

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

Further details of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2022* are outlined in Attachment A.

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 may 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.

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 organisations. A Regulatory Impact Statement (**RIS**) is therefore not required for this proposal. OBPR has advised a RIS is not required for this proposal (OBPR Ref. OBPR21-01246).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out in Attachment B.

Details of the Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2022

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2022*.

Section 2 – Commencement

This section provides that the Legislative Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that subsection 37(1) of the *Greenhouse and Energy Minimum Standards Act 2012* is the provision under which the Legislative Instrument is made.

Section 4 – Definitions

This section provides for definitions of terms used in the Legislative Instrument. The term ‘*exempt models*’ is defined in section 5 of the Instrument.

Section 5 – Exemption

This section exempts the models specified in clause 1 of Schedule 1 to the Legislative Instrument (the *exempt models*) from the requirements specified in clause 2 of Schedule 1.

Section 6 – Repeal

This section provides that the Legislative Instrument is repealed on 31 March 2025.

Schedule 1 – Exemption

Schedule 1 to the Legislative Instrument sets out the following terms:

- the specified *exempt models*, including model numbers and product descriptions covered by the Legislative Instrument (clause 1);
- the requirements of the 2019 Determination from which the models are 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) 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 (Exemption) Instrument (No. 2) 2022* specifies models of Greenhouse and Energy Minimum Standards (GEMS) products that the GEMS Regulator has exempted from the requirements of Part 3 of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019*.

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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