

## **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. 3) 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. 3) 2022 (Instrument)* is to exempt supplies by Hewlett Packard Australia Pty Ltd (HPA), trading as Hewlett Packard Enterprise of a specified computer server from the minimum energy performance (**MEPS**) requirement relating to the standby (off) power mode consumption (**standby MEPS requirements**) set out in subsection 6(1)(b) of the *Greenhouse and Energy Minimum Standards (Computers) Determination 2013 (2013 Determination)*.

The remote management capabilities of the ProLiant MicroServer Gen10 Plus v2 (Gen10 Plus v2), both small-scale computer servers, which remain on even when the servers are in standby mode, make it difficult for these servers to comply with the standby MEPS requirements.

The GEMS Regulator considered all the matters set out in the Regulation and has decided to grant the exemption requested by HPA. 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 impact on Australia's greenhouse gas emissions as a result of the exemption will not be significant as the projected sales are not large.

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

Further details of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 3) 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. 3) 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. 3) 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 model*’ is defined in section 5 of the Instrument.

**Section 5 – Exemption**

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

**Section 6 – Repeal**

This section provides that the Legislative Instrument is repealed on 30 November 2029.

**Schedule 1 – Exemption and condition of exemption**

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

- the specified *exempt model*, including model number and product description covered by the Legislative Instrument (clause 1);
- the requirements of the 2013 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. 3) 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. 3) 2022* specifies models of Greenhouse and Energy Minimum Standards (GEMS) products that the GEMS Regulator has exempted from the requirements of subsection 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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