

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) 2024

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 a specified model of a GEMS product 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) 2024 (Legislative Instrument)* is to exempt supplies by Asko Appliances (Aust) Pty. Ltd (**Asko**) of specified refrigerators and freezers from the minimum energy performance (**MEPS**) requirements, labelling requirements and other requirements relating to the testing requirements set out in part 8, part 9 and part 10 of the *Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019 (2019 Determination)*.

The exemption granted by this Legislative Instrument will enable Asko to sell their remaining stock of 42 products of the specified model. The Asko model was first registered under the *Greenhouse and Energy Minimum Standards (Refrigerator and Freezer) Determination 2012 (2012 Determination)*, and subsequently registered under the 2019 Determination in accordance with section 36 of the Act. The model ceased to be imported in Australia in April 2022.

The GEMS Regulator considered all the matters set out in the Regulation, including the impact on Australia's greenhouse gas emissions as required under regulation 4.1.5(a) of the Regulation, and has decided to grant the exemption requested by Asko. The model already meets the MEPS requirements in relation to the 2019 Determination, due to the MEPS requirements in the 2012 Determination being rolled over unchanged into the 2019 Determination. The GEMS Regulator is therefore satisfied that the impact on Australia's greenhouse gas emissions as a result of the exemption will not be significant.

Further details of the Legislative Instrument 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.

Exemption from sunseting and disallowance

Subsections 44(1) and 54(1) of the *Legislation Act 2003* (Legislation Act) provide that instruments are not subject to disallowance and sunseting where the enabling legislation facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States. The Act underpins and facilitates the operation of an intergovernmental scheme for product energy efficiency, giving effect to the Intergovernmental Agreement for the GEMS Legislative Scheme. Consequently the Legislative Instrument is not subject to disallowance or sunseting. Further details are provided at [Attachment B](#).

Consultation

The exemption set out in the Legislative 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 Legislative Instrument. The Office of Impact Analysis (OIA), formerly known as Office of Best Practice Regulation, 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. OIA has advised a RIS is not required for this proposal (OBPR Ref. OBPR21-01246).

Statement of Compatibility with Human Rights

In accordance with subsection 15J(2) of the Legislation Act, as the Legislative Instrument is not a disallowable instrument, a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required.

Details of the Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2024

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) 2024*.

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 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 twelve months after coming into effect.

Schedule 1 – 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 2019 Determination from which the model is exempt (clause 2);
- the supplies to which the exemption applies (clause 3).

Details of the exemptions from disallowance and sunseting in the *Legislation Act 2003*

Source of exemptions

Legislative instruments made under the *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) (excluding regulations) are exempt from disallowance under subsection 44(1) of the *Legislation Act 2003* (the Legislation Act), and from sunseting under subsection 54(1) of the Legislation Act.

Subsections 44(1) and 54(1) of the Legislation Act relevantly provide that instruments are not subject to disallowance and sunseting where the enabling legislation (not being the *Corporations Act 2001*) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States and Territories and authorises the instrument to be made for the purposes of that scheme.

The GEMS Act creates a national framework for product energy efficiency in Australia (the GEMS Scheme) and underpins the Equipment Energy Efficiency (E3) Program. The E3 program is an initiative of the Australian, state, self-governing territory, and New Zealand Governments. The GEMS Scheme is an intergovernmental scheme, given that:

- it is governed by the Inter-governmental Agreement for the GEMS Legislative Scheme
- it is jointly funded, and
- key legislative instruments under the GEMS Scheme require consent from participating jurisdictions before they can be made or revoked (see sections 33 and 35 of the GEMS Act).

Legislative instruments made under the GEMS Act are made for the purposes of this intergovernmental scheme. Therefore, such legislative instruments are exempt from sunseting and disallowance.

Justification for exemptions

Through the E3 program, the Australian Government works with states and self-governing territories and the New Zealand Government:

- to identify appliances and other products which are appropriate for regulation
- to consult with industry stakeholders and agree requirements based on technical and product-specific considerations, and
- to set mandatory minimum energy efficiency requirements for these products, as well as consistent labelling and other requirements.

In this context, the exemptions from disallowance and sunseting have the effect that, where the intergovernmental scheme has agreed to introduce specific regulatory requirements (including with participating jurisdictions' consent to the key requirements of GEMS determinations), the Commonwealth Parliament cannot then override that agreement. The exemptions therefore promote confidence in the E3 program and encourage ongoing, cooperative participation from jurisdictions.

As well as implementing an intergovernmental scheme, these exemptions are justified on the bases that:

- instruments made under the GEMS Act:
 - are based on technical and scientific evidence about products' energy use and appropriate test standards, and
 - affect commercial certainty where manufacturers and importers need to adapt to new regulatory requirements, and
- the objects of the GEMS Act include to give effect to certain obligations that Australia has under particular international conventions.

In view of their detailed scientific and technical content, GEMS determinations and associated legislative instruments are confined in the matters that they deal with, and so do not deal with broad matters of policy or with politically contentious issues. The exemptions ensure that the Commonwealth Parliament cannot override the consideration given to these matters through expert and stakeholder consultation, and the collaborative E3 program.