

EXPLANATORY STATEMENT

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Deemed Compliance) Declaration (No. 1) 2024

Legislative Authority

Section 27A of the *Greenhouse Energy Minimum Standards Act 2012* (**Act**) enables the GEMS Regulator to declare, by legislative instrument, that specified classes of products or specified models of GEMS products are taken, for the purposes of this Act, to comply with one or more requirements, or one or more aspects of one or more requirements, of a specified GEMS determination in specified circumstances or if specified conditions are complied with.

Subsection 33(3) of the *Acts Interpretation Act 1901* 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.

Purpose and Operation

Subsection 27A(1) of the Act provides that the GEMS Regulator may, by legislative instrument, declare that specified classes of products or specified models of GEMS products are taken, for the purposes of this Act, to comply with one or more requirements, or one or more aspects of one or more requirements, of a specified GEMS determination, in specified circumstances or if specified conditions are complied with. A GEMS determination is defined in section 11 of the Act. In accordance with subsection 27A(3) of the Act, the GEMS Regulator may not make a declaration under subsection 27A(1) unless the GEMS Regulator is satisfied that making the declaration is likely to promote the objects of the Act, and the requirements (if any) prescribed by the regulations for the purposes of this paragraph are complied with. Currently, the *Greenhouse and Energy Minimum Standards Regulation 2012* does not prescribe requirements for the purposes of section 27A of the Act.

The purpose of the *Greenhouse and Energy Minimum Standards (Deemed Compliance) Declaration (No. 1) 2024* (**Declaration**) is for the GEMS Regulator to declare that the use of sodium percarbonate in the detergent used for testing be an alternative to sodium perborate tetrahydrate for all products within the scope of the *Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2015* (**2015 Determination**).

The 2015 Determination requires testing to standard AS/NZS 2040.1:2005 (**2005 Standard**). The Declaration will enable suppliers of all products within the scope of the 2015 Determination to have the option to test with the current reference detergent outlined in the 2005 Standard, but using sodium percarbonate as the bleaching agent instead of sodium perborate tetrahydrate as required by the 2005 Standard. The Declaration allows for use of sodium percarbonate and requires dosing the new bleach at a rate of 70% of the amount of sodium perborate tetrahydrate included in the 2005 Standard.

The Declaration refers to the 2005 Standard as it existed on the date the 2015 Determination came into force for consistency, so that same Standard is referred to by both the Declaration and the 2015 Determination.

The GEMS Regulator considers that the Declaration is likely to promote the objects of the Act as it will support the government's obligations under international conventions by facilitating the supply of energy efficient washing machines. Suppliers relying on the Declaration would be permitted to undertake testing in Europe, supporting more five star or higher rated machines being brought into the Australian market. This further drives reduced energy use and greenhouse gas emission reductions. Reduced electricity consumption reduces the need for electricity generation from the combustion of fossil fuels. The Declaration will also allow for comparison with tests against the 2005 Standard using the current reference detergent.

The Declaration will be repealed when the 2015 Determination is revoked and replaced by the *Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2024*.

Background

The 2015 Determination refers to the requirements for the detergent in the 2005 Standard. The bleach required by the 2005 Standard, sodium perborate tetrahydrate, is currently banned in Europe. The European Chemicals Agency, an agency of the European Union, lists the chemical as toxic for reproduction and its use in the European Union has been restricted to permitted uses since May 2023. As a result, a new detergent composition was introduced for testing against European washing machine standards. A replacement bleach, sodium percarbonate, is specified for the detergent.

Sodium perborate tetrahydrate is still permitted in Australia and there are no current laws prohibiting its use for testing washing machines. The Standards Australia committee, 'EL-059 Dishwashers, Clothes Washers, and Dryers', is considering a process to update requirements in the current standard (AS/NZS 2040.1:2021) to allow use of sodium percarbonate in the detergent as an alternative. The effect of the Declaration is consistent with the effect of this proposed change to the current standard.

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:

- (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
- (b) authorises the instrument to be made by the body or for the purposes of the body or scheme.

The Act underpins and facilitates the operation of an intergovernmental scheme for product energy efficiency, giving effect to the Inter-Governmental Agreement for the Greenhouse and Energy Minimum Standards (**GEMS**) Legislative Scheme (**IGA**). The Act also expressly provides for the participation of multiple governments. Given this, and the fact that the Act authorises the Declaration to be made under section 27A, the Declaration is not subject to

disallowance or sunseting under the Legislation Act. Further details are provided at **Attachment B**.

Consultation

The Declaration was considered on enquiry from multiple manufacturers of washing machines, as well as representative industry bodies. Consultation was undertaken with these parties for the purpose of clarifying the conditions in the Declaration.

Regulatory Impact

There will be no regulatory burden arising from the Declaration. The Declaration expands the opportunity for compliance for industry by providing an additional alternative testing mechanism, as opposed to replacing what is already stipulated in the 2015 Determination. There is no significant impact to GEMS compliance and enforcement activities, specifically check testing. Sodium percarbonate is widely available, therefore it is not expected to impact the check testing process.

Details/Operation

The Declaration is a legislative instrument for the purposes of the Legislation Act.

Details of the Declaration are set out in **Attachment A**.

In accordance with subsection 15J(2) of the Legislation Act, as the Declaration 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.

ATTACHMENT A

Details of the *Greenhouse and Energy Minimum Standards (Deemed Compliance) Declaration (No. 1) 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Greenhouse and Energy Minimum Standards (Deemed Compliance) Declaration (No. 1) 2024* (the Declaration).

Section 2 – Commencement

This section provides that the Declaration commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Declaration is made under subsection 27A(1) of the *Greenhouse and Energy Minimum Standards Act 2012* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Definitions

This section provides for definitions of terms used in the Declaration.

Section 5 – Specified product class covered by this Declaration

This section provides that the Declaration covers all products within the scope of the *Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2015* (2015 Determination), as stipulated in section 5 of the 2015 Determination.

Section 6 – Deemed compliance

This section provides that pursuant to subsection 27A(1) of the Act, the specified products class are deemed to comply with subsection 7(3) of the 2015 Determination if the modifications to AS/NZS 2040.1:2005 listed in Schedule 1 to the Declaration are complied with.

Section 7 – Repeal

This section provides that the Declaration is repealed at the same time the 2015 Determination is revoked.

Schedule 1 – Deemed compliance requirements

The table in Schedule 1 lists three clauses of AS/NZS 2040.1.2005 (Column 1) and sets out modifications to those clauses (Column 2).

Subsection 7(3) of the 2015 Determination sets out the specified requirements for conducting tests on the specified product class. Schedule 1 to the Declaration has the effect that tests using sodium percarbonate instead of sodium perborate tetrahydrate are deemed to be compliant with the specified requirements (including requirements as to sodium percarbonate use including the dosing rate) under the 2015 Determination.

ATTACHMENT B

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* (**GEMS Act**) (excluding regulations) are exempt from disallowance under subsection 44(1) of the *Legislation Act 2003* (**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 was enacted and is operated to implement the Inter-governmental Agreement;
- its activities are jointly funded by the Commonwealth and the States and Territories under the Inter-governmental Agreement; 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).

The Declaration is made under the GEMS Act for the purposes of this intergovernmental scheme and is authorised by subsection 27A(1) of the GEMS Act. Therefore, the Declaration is 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 basis that:

- instruments made under the GEMS Act:
 - are based on technical and scientific evidence about products' energy use and appropriate test standards;
 - 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.