

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. 1) 2025

Legislative Authority

Subsection 37(1) of the *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* (GEMS 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. 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 in accordance with subsection 37(2) of the GEMS 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.

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

The purpose of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 1) 2025* (Legislative Instrument) is to exempt supplies by Rinnai Australia Pty Ltd (Rinnai) of specified air conditioner model HINRQ80B/HONRQ80B (Specified Model) from the minimum energy performance standards (MEPS) requirements, labelling requirements and other requirements relating to the testing requirements set out in part 3, part 4 and part 5 of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019* (2019 Determination).

Background

The Legislative Instrument will enable Rinnai to sell their remaining stock of 62 products of the Specified Model. The Specified Model was previously registered under the *Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2013* (2013 Determination) and subsequently registered under the 2019 Determination in accordance with section 36 of the GEMS Act. The Specified Model is now discontinued, whereby manufacture and import into Australia ceased in 2021.

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 Rinnai. The Specified Model already meets the MEPS requirements set out in the 2019 Determination, due to the MEPS requirements in the 2013 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. The GEMS Regulator is also satisfied that 12 months is an appropriate duration for the exemption before it is repealed because Rinnai indicated that it is estimated to take this amount of time to sell the stock if an exemption is granted.

Consultation

The exemption set out in the Legislative Instrument was considered on application from the applicant, Rinnai. 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. OIA has advised a Regulatory Impact Statement is not required for this proposal (OBPR Ref. OBPR21-01246).

Details

The Legislative Instrument is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Further details of the Legislative Instrument are outlined in **Attachment A**.

Exemption from sunseting and disallowance

Subsections 44(1) and 54(1) of the 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 or Territories; and
- authorises the instrument to be made by the body or for the purposes of the body or scheme.

The GEMS Act underpins and facilitates the operation of an intergovernmental scheme for product energy efficiency, giving effect to the Inter-governmental Agreement for the GEMS Legislative Scheme. The GEMS Act also expressly provides for the participation of multiple governments. Given this, and the fact that the GEMS Act authorises the instrument to be made under subsection 37(1), the Legislative Instrument is not subject to disallowance or sunseting under the Legislation Act. Further details are provided at **Attachment B**.

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 is not required to be prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Details of the Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 1) 2025

Section 1 – Name of Instrument

This section specifies the name of the Legislative Instrument as the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 1) 2025*.

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 the Legislative Instrument is made under subsection 37(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 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 from the requirements specified in clause 2 of Schedule 1.

Section 6 - Repeal

This section provides that the Legislative Instrument is repealed 12 months after it commences. This timeframe was deemed appropriate and reasonable as Rinnai had indicated that if an exemption is granted, it is estimated to take 12 months to sell the remaining stock of the exempt model.

Schedule 1 – Exemption

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

- the specified *exempt model* 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* (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 Program (E3 Program). The E3 Program is an initiative of the Australian, state, self-governing territories, 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 the 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.