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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**GREENHOUSE AND ENERGY MINIMUM STANDARDS
(REGISTRATION FEES) BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Climate Change and Energy Efficiency,
the Honourable Greg Combet AM MP)

GREENHOUSE AND ENERGY MINIMUM STANDARDS (REGISTRATION FEES) BILL 2012

GENERAL OUTLINE

Purpose

The Greenhouse and Energy Minimum Standards Bill 2012 will establish a national legislative framework for regulating the energy efficiency of products supplied or used within Australia. This national framework will allow the work of Australia's Equipment Energy Efficiency (E3) Program to continue under a more comprehensive and consistent framework. The Greenhouse and Energy Minimum Standards (Registration Fees) Bill 2012 (the GEMS (Registration Fees) Bill) will accompany the Greenhouse and Energy Minimum Standards Bill 2012, to establish legislative power to charge registration fees as part of the E3 Program.

Background

Australia's E3 Program has developed into a popular and effective mechanism for reducing energy costs and greenhouse gas emissions. The E3 Program has proven so successful that, in 2005, 83% of surveyed Australian consumers reported referring to the Energy Rating Labels when purchasing major household appliances. In 2010, the energy savings arising from the more efficient air conditioners and refrigerators required by the E3 Program was calculated at 6.6 terawatt hours, a benefit valued at over \$1 billion.

Australian governments recognise the value of the E3 Program for improving energy efficiency and the potential to achieve greater efficiencies by moving the Program to a more consistent, national footing. For these reasons, the Australian Government undertook to expand the E3 Program beyond electrical equipment as part of its *Solar Schools—Solar Homes* election commitment in 2007. This commitment was reinforced in July 2009 when the Council of Australian Governments issued the National Strategy on Energy Efficiency, with a commitment to establish national legislation to regulate product energy efficiency.

The national legislation will allow the E3 Program to continue on a more consistent and comprehensive basis, with an expanded range of products and a strengthened compliance regime. Under the new framework, the E3 Program will continue to levy registration fees from businesses that deal with regulated products. These fees will recover a portion of the costs incurred administering the Program, for example, the cost of processing registration applications and costs incurred monitoring compliance with the Act.

In contrast to fees to recover the cost of processing applications, fees charged to recover costs of the compliance monitoring regime may constitute a levy by a public authority for public purposes, not a fee for services rendered. Fees that are not for services rendered may constitute a tax so, in accordance with section 55 of the Australian Constitution, legislative authority to charge such fees is established in a law dealing solely with this issue. For these reasons the GEMS (Registration Fees) Bill is drafted separately to, but in support of, the Greenhouse and Energy Minimum Standards Bill 2012 and the expanded E3 Program.

Financial Implications

This Bill will authorise registration fees under the E3 Program that are forecast to accrue \$11.6 million over the five financial years from 2012-2013 to 2016-2017. Fee revenue will be Budget neutral as the Australian Government directed, in the 2012-2013 Budget, that income from registration fees under this Act would offset the costs of the E3 Program.

2. REGULATORY IMPACT STATEMENT

Registration fees are charged under the existing E3 Program. The GEMS (Registration Fees) Bill therefore does not introduce a proposal that carries any new regulatory burden for Australian individuals or businesses. For these reasons the Office of Best Practice Regulation has advised that a formal Regulatory Impact Statement is not required for the GEMS (Registration Fees) Bill.

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 (Registration Fees) Bill 2012

This Bill 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 Bill

The GEMS (Registration Fees) Bill 2012 accompanies the Greenhouse and Energy Minimum Standards Bill 2012. Together, these Bills will establish a national framework to regulate energy efficiency and product labelling standards, transferring Australia's Equipment Energy Efficiency (E3) Program to a national legislative basis.

The GEMS (Registration Fees) Bill establishes the legislative basis for the Regulator, established by the main GEMS Bill, to levy fees from businesses registering product models under the main GEMS Bill. The GEMS Bill requires registration of regulated product models to maintain the existing practice of the E3 Program, ensuring the Regulator can monitor the range of regulated product models that enter the Australian market.

Registration fees will recover costs incurred under the E3 Program, including the costs of processing registration applications and a portion of the costs of monitoring compliance with the GEMS Bill. As compliance costs may not constitute a direct fee for service but a charge to raise funds for public purposes, the GEMS (Registration Fees) Bill establishes legislative power to impose fees as taxes. Consistent with section 55 of the Australian Constitution, the power to establish fees as taxes is established separate from other provisions.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

**The Hon Greg Combet AM MP
Minister for Climate Change and Energy Efficiency
Minister for Industry and Innovation**

Notes on Clauses

Part 1—Preliminary

Clause 1 Short Title

1. Clause 1 establishes the short title of the Act as the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*.

Clause 2 Commencement

2. Clause 2 establishes the commencement date for various portions of the Act. The preliminary sections 1 and 2 commence on the day the Act receives Royal Assent, while the remainder of the Act commences on 1 October 2012 to coincide with the commencement of the Greenhouse and Energy Minimum Standards Act 2012.

Clause 3 Act binds the Crown

3. Clause 3 ensures the Act binds the Crown, to the extent the Crown can be bound to pay fees to register products for use or supply under the Equipment Energy Efficiency Program.

Clause 4 External Territories

4. Clause 4 extends the operation of the Act to Australia's external territories, ensuring that registration fees can be levied on persons located in, and with regard to applications made in, the external territories.

Clause 5 Extraterritorial application

5. Clause 5 extends the operation of the Act beyond Australia's territorial jurisdiction, ensuring that registration fees can be levied on persons located overseas and with regard to applications made overseas.

Clause 6 Act does not impose tax on property of a state

6. The Act is created with an expectation that governments – federal, state and territory – would pay registration fees for any product models that a government registers under the Greenhouse and Energy Minimum Standards Act 2012.
7. However, should a question arise whether this would amount to taxation imposed on property belonging to a state, clause 6 ensures the Act should be construed as not intending to impose taxation on property belonging to a state. If registration fees were found to be a form of taxation on property of a state, clause 6 would excuse the state from any legal obligation to pay those fees. Nothing would prevent a state voluntarily paying registration fees.

Clause 7 Definitions

8. Clause 7 provides definitions of particular terms used within the Act, to assist interpretation.

Part 2—Registration fees

Clause 8 Imposition of registration fees

9. Clause 8 permits the Regulator to specify fees for applications to register products under the Greenhouse and Energy Minimum Standards Act 2012. Registration fees may be expressed as a single fee, or as two or more fees (e.g. one fee related to the costs of registration services and one fee related to compliance monitoring costs).
10. Fees must be specified in a legislative instrument, as opposed to specified in this Act or the Greenhouse and Energy Minimum Standards Act 2012. This will help to strike the correct balance between providing certainty for people attempting to plan registration fee payments and ensuring flexibility to alter fees as necessary in the future. Specifying fees in legislative instruments ensures that fees are developed in a transparent manner, subject to regulatory impact assessment and tabled in Parliament for the public record.

Clause 9 Matters relating to amount of fees

11. Clause 9 permits legislative instruments to specify registration fees by nominating an amount to be paid or a method or formula for calculating registration fees. Specifying fees in legislative instruments, as opposed to on the face of the Act itself, ensures flexibility to change fees over time. Specifying fees in legislative instruments also ensures that fees are subject to impact assessments and tabled in Parliament.
12. Clause 9 states that registration fees need not be calculated with reference to the cost of registration services and compliance monitoring. This is not intended to mean that fees are not fundamentally a cost recovery mechanism, but that the costs recovered under registration fees need not be related to these activities only and may relate to other under the Program activities.
13. Rather than specify a maximum fee in dollar terms, the Act clarifies that registration fees are for the purpose of cost recovery, meaning registration fees should never exceed the reasonable costs taken into account when specifying the amount of registration fees. At the time of drafting, the Act anticipates that the costs of processing registration applications and the costs of monitoring compliance with the Act will be taken into account when specifying the amount of registration fees. The Act specifies that other costs also may be taken into account in determining the registration fees.

Clause 10 Regulations

14. Clause 10 permits the Governor-General to make Regulations to prescribe any matters convenient or necessary to carry out or give effect to the Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012.