

## 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) 2020*

### Purpose and operation

Section 37 of the *Greenhouse and Energy Minimum Standards Act 2012* (the **Act**) enables the Greenhouse and Energy Minimum Standards (GEMS) Regulator, by legislative instrument, to exempt 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, and enables the GEMS Regulator to specify conditions to which the exemption is subject. GEMS determinations are defined in section 11 of the Act.

Section 37 also provides that regulations may be made in order to provide a framework for administrative processes around the submission and assessment of applications for exemption. Division 4.1 of the *Greenhouse and Energy Minimum Standards Regulation 2012* (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.

The purpose of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No.2) 2020* (the **Instrument**) is to exempt the specified air conditioners from the GEMS level requirements related to testing of products set out in Schedule 2 of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019* (the **Determination**).

Seeley International Pty Ltd (**Seeley**) has commenced the importation of certain Braemar brand ducted split system air conditioner models, which are rebranded versions of models also supplied and registered by the manufacturer. Seeley has a shipment of the models arriving from overseas and scheduled to be delivered to a customer, Cold Front Air Conditioning QLD/NSW Pty Ltd (**Cold Front**), on or around 2 August 2020. Due to the commencement of the Determination on 1 April 2020, which contains revised testing requirements for demonstrating compliance with the GEMS level requirements, Seeley is unable to rely on the testing done by the manufacturer to support the registration of its models.

Instead, the manufacturer has commissioned testing of the Braemar branded models on Seeley's behalf. Seeley had anticipated this testing would be completed in time for the products to be registered to the Determination before supplying them to Cold Front. However, Seeley was recently informed by the manufacturer that, due to the impact of COVID-19 on the capacity of the test laboratory, the testing would not be completed until some weeks after the date of the scheduled supply to Cold Front.

Seeley sought an exemption from the GEMS level requirements related to testing for the ordered units to allow them to be supplied to Cold Front as scheduled when they arrive in Australia, noting that they are identical in specification to products currently registered by the manufacturer and therefore would be likely to also meet the GEMS level requirements for efficiency.

The GEMS Regulator considered all the matters set out in reg 4.1.5 of the Regulation and has decided to grant the exemption requested by Seeley under paragraph 4.1.2(a) of the Regulations. The circumstances that led to the testing not being completed in the anticipated

timeframe were beyond Seeley's control. The models are expected to meet the GEMS level requirements, and Seeley has undertaken to provide the results of testing to the GEMS Regulator once it is completed, and before supplying any further models. Consequently, there will be no negative impact on Australia's greenhouse gas emissions as a result of the exemption.

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

### **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 can 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 OBPR has advised that such proposals are not likely to have a regulatory impact on business, community organisations or individuals, and therefore the preparation of a Regulation Impact Statement is not required.

## Detailed description of provisions in the Instrument

### 1. Name

Section 1 specifies the name of the Instrument as the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2020*.

### 2. Commencement

Section 2 provides that the Instrument commenced on the day it is made. This is due to the short timeframe between the making of the Instrument and the date of the scheduled first supply of the products. Commencement before registration is consistent with subsection 12(1A) of the *Legislation Act 2003*. The exemption provided by the Instrument is beneficial in nature through providing an exception to the offence in section 16 of the Act and so there is no reason why subsection 12(2) of the *Legislation Act 2003* would be engaged to prevent any retrospective application of the Instrument

### 3. Authority

Section 3 sets out the provision of the Act under which the Instrument is made.

### 4. Definitions

Section 4 sets out definitions of terms used in the Instrument. The term ‘*exempt model*’ is defined in section 5 of the Instrument. The *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019* is incorporated by the Instrument as in force from time to time and is available at [www.legislation.gov.au](http://www.legislation.gov.au).

### 5. Exemption

Section 5 exempts the models specified in clause 1 of Schedule 1 to the Instrument (the *exempt models*) from the requirements specified in clause 2 of Schedule 1 for the supplies specified in clause 3 of Schedule 1.

### 6. Conditions of exemption

Section 6 provides that the conditions specified for the purposes of subsection 37(2) of the Act are set out at clause 4 of the Schedule. The purpose of the conditions is to ensure that Seeley International complies with its obligations under the Act in relation to any future supplies of the products, subsequent to the supplies covered by this Instrument, including having an up-to-date registration in relation to those models. It also reflects the obligation that models covered by exemptions must still be registered under the Act.

### 7. Repeal

Section 7 provides that the Instrument is repealed on the day after the end of the period of 1 year after it is registered.

## Schedule 1 – Exemption

Schedule 1 to the Instrument sets out the following::

- the specified *exempt models*, including model numbers, product descriptions and the number of units covered by the Instrument (clause 1);

- the requirements of the Determination from which the models are exempt (clause 2), which are the GEMS level requirements in relation to the testing of products in Schedule 2 of the Determination;
- the supplies to which the exemption applies (clause 3), which are the supply of the models specified in clause 1 by Seeley to Cold Front, and subsequent supplies of those models by Cold Front or any other party who re-supplies those models after Seeley supplies them to Cold Front; and
- the conditions to which the exemption is subject (clause 4), which include:
  - notifying the GEMS Regulator of the results of testing for the models as soon as practicable after receiving those results
  - updating the registrations of the models to include the results of testing and any other relevant information; and
  - not supplying any other units of the models until the GEMS Regulator is satisfied with Seeley's actions in relation to the previous conditions.

## **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. 2) 2020*

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. 2) 2020* specifies models of Greenhouse and Energy Minimum Standards (GEMS) products that the GEMS Regulator has exempted from the requirements of Schedule 2 of the *Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019*.

### **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.

**Shane Gaddes**

**GEMS Regulator**