

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister for Climate Change and Energy

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards Legislation Repeal Instrument 2024

Purpose and Operation

The *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) is about promoting the development and adoption of products to reduce energy use and greenhouse gas production. This is achieved by applying greenhouse and energy minimum standards (GEMS) in association with the supply and commercial use of products that use energy, or affect the energy used by another product. These standards are provided for by requirements in Ministerial determinations (GEMS determinations).

The *Greenhouse and Energy Minimum Standards Legislation Repeal Instrument 2024* (this Instrument) repeals four (4) legislative instruments made under the GEMS Act:

- a revocation instrument – the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets Revocation) Instrument 2020* (the 2020 revocation instrument), and
- three (3) GEMS determinations:
 - the *Greenhouse and Energy Minimum Standards (Ballasts for Fluorescent Lamps) Determination 2012*
 - the *Greenhouse and Energy Minimum Standards (Digital Television Set-top Boxes) Determination 2012*
 - the *Greenhouse and Energy Minimum Standards (Transformers and Electronic Step-down Converters for ELV Lamps) Determination 2012*.

The 2020 revocation instrument revoked the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2019*. However, the 2020 revocation instrument was not repealed by operation of Division 1 of Part 3 of Chapter 3 of the *Legislation Act 2003* (the Legislation Act). Therefore, it needs to be repealed by legislative instrument.

The three (3) GEMS determinations have, after consideration in conjunction with participating jurisdictions, been found to be no longer efficient and effective based on the number of registrations for those products on the Energy Rating Registrations Database. GEMS determinations do not sunset under Part 4 of Chapter 3 of the Legislation Act and therefore need to be repealed by legislative instrument.

Accordingly, these legislative instruments no longer need to remain in force, and therefore are repealed in this Instrument.

Further details about this Instrument are set out at [Attachment A](#).

Subsections 44(1) and 54(1) of the Legislation Act provide relevantly that legislative 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 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. Consequently, this Instrument is not subject to disallowance or sunseting. Further details are provided at Attachment B.

Authority

This Instrument revokes the 2020 revocation instrument under subsection 35(3) of the GEMS Act. This provision permits the Minister, by legislative instrument, to revoke a GEMS determination without making a replacement determination. The GEMS Act does not include an express power to revoke a legislative instrument that revokes a GEMS determination. However, under subsection 33(3) of the *Acts Interpretation Act 1901* (the AI Act), 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.

Accordingly, the effect of subsection 33(3) of the AI Act is that the power under subsection 35(3) of the GEMS Act to make a revocation instrument includes the power to repeal a revocation instrument. Subsection 35(5) of the GEMS Act provides that subsection 33(3) of the AI Act does not apply in relation to a GEMS determination. However, subsection 35(5) of the GEMS Act does not prevent subsection 33(3) of the AI Act from applying in relation to a revocation instrument made under subsection 35(3) of the GEMS Act.

The three (3) GEMS determinations are also revoked under subsection 35(3) of the GEMS Act. As a result of subsection 35(5) of the GEMS Act, GEMS determinations can be revoked only by a legislative instrument made under subsection 35(3) of the GEMS Act. Subsection 35(3) of the GEMS Act only permits the Minister, by legislative instrument, to revoke a GEMS determination without making a replacement determination if the Minister has obtained consent of participating jurisdictions. Approval from Ministers from participating jurisdictions, as required under the Inter-Governmental Agreement for the GEMS Legislative Scheme, has been obtained.

Consultation

On 21 April 2022, public consultation was open for the review of the determinations for ballasts for fluorescent lamps and transformers and electronic step-down converters for ELV lamps. At the time of consultation, it was understood that GEMS determinations expire (sunset) after ten years, and thus the review recommended that the determination expire on 1 April 2023. An extension was provided for submissions from 20 May 2022 to 10 June 2022. There was direct communication with companies with registered products, however there were no submissions received.

On 16 November 2021, public consultation was undertaken on GEMS determinations that were due to expire by 2025 including the digital television set-top boxes determination. At the time of consultation, it was understood that GEMS determinations expire (sunset) after

ten years, and thus the review recommended that the determination expire on 1 April 2023. Public consultation closed on 14 December 2021. The four submissions received supported the digital television set top boxes determination expiring on 1 April 2023 because the market for the product is declining.

These public consultations and the lack of registrations of these products over the last 3 years formed the basis of the decision made to repeal the product determinations.

Regulatory Impact

Office of Impact Analysis has been consulted on this Instrument (OIA23-04955). No regulatory impact analysis is required.

Statement of Compatibility with Human Rights

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

Detailed description of provisions in the *Greenhouse and Energy Minimum Standards Legislation Repeal Instrument 2024*

1 Name

Section 1 sets out the title of this Instrument as the *Greenhouse and Energy Minimum Standards Legislation Repeal Instrument 2024*.

2 Commencement

Section 2 sets out the commencement arrangements for this Instrument. The whole of this Instrument commences on the day after it is registered on the Federal Register of Legislation.

3 Authority

Section 3 provides that this Instrument is made under subsection 35(3) of the *Greenhouse and Energy Minimum Standards Act 2012*.

4 Schedules

Section 4 provides that each instrument that is specified in a Schedule to this Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Instrument has effect according to its terms.

Schedule 1 – Repeals

Schedule 1 lists the legislative instruments that are repealed:

- the *Greenhouse and Energy Minimum Standards (Ballasts for Fluorescent Lamps) Determination 2012*
- the *Greenhouse and Energy Minimum Standards (Digital Television Set-top Boxes) Determination 2012*
- the *Greenhouse and Energy Minimum Standards (Refrigerated Cabinets Revocation) Instrument 2020*, and
- the *Greenhouse and Energy Minimum Standards (Transformers and Electronic Step-down Converters for ELV Lamps) Determination 2012*.

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 governments of the Commonwealth, the states and territories, and New Zealand. 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 it has been agreed, in accordance with the intergovernmental scheme, 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.