

EXPLANATORY STATEMENT

Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012

Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025

Legislative Authority

Subsection 8(1) of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* (GEMS Fees Act) provides that the Greenhouse and Energy Minimum Standards (GEMS) Regulator may, by legislative instrument, specify fees for registration applications. These fees are payable by a person who applies to register a product under section 41 of the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act).

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

A person may apply for registration under section 41 of the GEMS Act. The purpose of the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025* (the Instrument) is to specify the fees for each regulated product class that must be paid when a person applies to register a model of a regulated product. The Instrument was required to reflect the making of two new GEMS Determinations:

- the *Greenhouse and Energy Minimum Standards (Commercial Ice-makers) Determination 2025* (Ice-makers Determination); and
- the *Greenhouse and Energy Minimum Standards (LED Lamps) Determination 2025* (LED Lamps Determination),

and to ensure that the registration fees for the products covered by these determinations were properly set. No changes were otherwise made to the existing registration fees.

Background

The GEMS Act requires models of products that are covered by a GEMS Determination to be registered and provides offences for supply or commercial use of GEMS products that are not registered. A person may apply for registration under section 41 of the GEMS Act.

Registration ensures that the GEMS Regulator can identify which products are being sold in Australia, to assist monitoring of compliance with the GEMS Act and ascertain trends in product energy efficiency.

Registration fees assist the GEMS Regulator to recover a portion of the costs incurred in registering products under, and to monitor compliance with, the GEMS legislation. Cost recovery assists the GEMS Regulator to deliver improved registration and compliance monitoring services, for the benefit of regulated Australian businesses and the Australian public.

Consultation

The Department of Climate Change, Energy, the Environment and Water (the Department) conducted extensive consultation with Australian businesses throughout the development of the GEMS Act, as well as consulting with the governments of New Zealand and Australian states and territories, all of which participated in the over twenty-year old Equipment Energy Efficiency (E3) Program.

The Department worked extensively with industry and other stakeholders on the development of the LED Lamps Determination and the Ice-makers Determination, including on registration matters.

Consultation specifically addressed registration fees to recover registration and compliance monitoring costs. Australian businesses provided strong support for fees to recover these costs on the understanding that it would assist the GEMS Regulator to improve registration and compliance monitoring services.

Further internal consultation within the Department to develop the Instrument included liaising with experts on estimates for check testing, market surveillance costs, guidance on charging and cost recovery, review of cost estimates, and the anticipated number of models of LED lamps and commercial ice-makers to be registered.

Based on the above consultation, the Instrument includes the new LED Lamps Determination and the Commercial Ice-makers Determination in the schedule of fees and sets the corresponding fees to be Fee Bands 1 and 4 respectively.

Regulatory Impact

The Office of Impact Analysis (OIA) have advised that a Regulation Impact Statement is not required (OIA reference: OBPR21-01246). This OIA advice relates to a carve-out arrangement established in October 2022 that applies to all updates to the GEMS Fees Instrument.

Details/Operation

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

In accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, the Instrument repeals and replaces the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2024*.

Details of the Instrument are set out 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:

1. facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
2. authorises the instrument to be made by the body or for the purposes of the body or scheme.

The GEMS Act, and relatedly, the GEMS Fees Act, underpin and facilitate the operation of an intergovernmental scheme for product energy efficiency, giving effect to the Inter-governmental Agreement for the GEMS Legislative Scheme. In addition, the GEMS Fees Act authorises the Instrument to be made under subsection 8(1). Consequently, the Instrument is not subject to disallowance or sunseting and will remain in force until withdrawn or succeeded by a replacement instrument. Further details are provided at [Attachment B](#).

Other

As the Instrument is exempt from disallowance, subsection 15J(2) of the Legislation Act provides that a statement of compatibility with human rights under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required.

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

Section 1 – Name of Instrument

This section provides that the name of the instrument is the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025* (the Instrument).

Section 2 – Commencement

This section provides for the Instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Instrument is made under subsection 8(1) of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Interpretation

Subsection 4(1) clarifies that any terms in the Instrument that are defined in the *Greenhouse and Energy Minimum Standards Act 2012* or the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* have the same meaning, unless otherwise specified.

Subsection 4(2) clarifies that the descriptions in Column 4 of Schedule 2 to the Instrument are a generic description of products covered by the Greenhouse and Energy Minimum Standards (GEMS) Determinations listed in Column 3 of Schedule 2. They are provided for reference only.

Section 5 – Fees

Consistent with paragraph 9(1)(a) of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*, the Instrument specifies the amount for each registration fee. Section 5 specifies fees in Schedule 2 to the Instrument. The amount of the fee for each product type was calculated with reference to identified costs of registration staff and the registration system, as well as costs incurred in the inspection and monitoring program, such as purchasing and testing equipment. Relevant costs may be reassessed periodically throughout the life of the *Greenhouse and Energy Minimum Standards Act 2012* to ensure that fees represent an appropriate level of cost recovery.

Section 6 – Schedules

Subsection 6(1) specifies that each instrument that is specified in Schedule 1 to the Instrument is amended or repealed as set out in that Schedule.

Subsection 6(2) specifies that Schedule 2 to the Instrument sets out the registration fees payable in accordance with section 5 of the Instrument.

Schedule 1 – Repeals

Schedule 1 specifies that the whole of the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2024* is repealed.

Schedule 2 – Fees payable

The table in Schedule 2 lists four fee bands (Column 1), sets the amount of the fee for each fee band (Column 2) and specifies which of the fee bands (listed in Column 1) apply to applications to register products against the relevant GEMS Determination (listed in Column 3).

Schedule 2 has been amended to reflect the making of the following new GEMS Determinations:

- *Greenhouse and Energy Minimum Standards (LED Lamps) Determination 2025* (commencing the day after the end of the period of 12 months beginning on the day after registration); and
- *Greenhouse and Energy Minimum Standards (Commercial Ice-makers) Determination 2025* (commencing the day after the end of the period of 12 months beginning on the day after registration).

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 (Regulation Fees) Act 2012* (the GEMS Fees 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. This is because the GEMS Fees Act facilitates the operation of an intergovernmental scheme involving the Commonwealth and States and the *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025* (the Instrument) is authorised for the purpose of the scheme.

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 is governed by the Inter-governmental Agreement for the GEMS Legislative Scheme; 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 GEMS Fees Act supports the implementation of the GEMS Scheme, by enabling the GEMS Regulator to charge fees for the registration of certain products under the GEMS Act. Legislative instruments made under the GEMS Fees 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 to 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 Fees Act affect commercial certainty where manufacturers and importers need to adapt to new regulatory requirements; and
- an object of the GEMS Act is to give effect to certain obligations that Australia has under international climate change agreements.

GEMS determinations and associated legislative instruments are confined in the matters that they deal with and 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.