

## **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) 2025*

### **Purpose and Operation**

Subsection 37(1) of the *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* (**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 the products of that model. The GEMS Regulator may specify conditions to which the exemption is subject in accordance with subsection 37(2) of the Act. A GEMS determination is defined in section 11 of the Act.

The purpose of the *Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 2025* (**Legislative Instrument**) is to exempt supplies of a specified model of small-scale server supplied by Hewlett Packard Enterprise (HP) from the GEMS level requirements in relation to standby (off) power modes, as set out in paragraph 6(1)(b) of the *Greenhouse and Energy Minimum Standards (Computers) Determination 2013* (**2013 Determination**).

The exemption granted by this Legislative Instrument will enable HP to sell the stock of their specified model. The HP-branded model is not yet registered against the 2013 Determination, nor has it been imported into Australia.

Division 4.1 of the *Greenhouse and Energy Minimum Standards Regulation 2012* (**Regulations**) 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 GEMS Regulator considered all the matters required to be considered under regulation 4.1.5 of the Regulations, and other matters that may be considered under regulation 4.1.6 of the Regulations, and has decided to grant the exemption requested by HP.

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

### **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 may 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.

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.

### **Exemption from sunseting and disallowance**

Subsections 44(1) and 54(1) of the *Legislation Act 2003* (**Legislation Act**) provide that instruments are not subject to disallowance and sunseting where the enabling legislation:

- (a) facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States or Territories; and
- (b) authorises the instrument to be made by the body or for the purposes of the body or scheme.

The 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 Act also expressly provides for the participation of multiple governments. Given this, and the fact that the Act authorises the Legislative Instrument to be made under section 37, the Legislative Instrument is not subject to disallowance or sunseting under the Legislation Act. Further details are provided at [Attachment B](#).

### **Consultation**

The exemption set out in the Legislative 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 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. A Regulatory Impact Statement (**RIS**) is therefore not required for this proposal (OBPR Ref. OBPR21-01246).

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

**Details of the Greenhouse and Energy Minimum Standards (Exemption) Instrument (No. 2) 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. 2) 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 subsection 37(1) of the *Greenhouse and Energy Minimum Standards Act 2012* and subsection 33(3) of the *Acts Interpretation Act 1901* are the provisions under which the Legislative Instrument is made.

**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 Legislative Instrument.

**Section 5 – Exemption**

This section exempts the model specified in clause 1 of Schedule 1 to the Legislative Instrument (the *exempt model*) from the requirements specified in clause 2 of Schedule 1.

**Section 6 – Conditions of exemption**

This section provides that there are no conditions specified under section 37(2) of the Act.

**Section 7 - Repeal**

This section provides that the Legislative Instrument is repealed on 31 December 2027.

**Schedule 1 – Exemption**

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

- the specified *exempt model*, including model number and product description covered by the Legislative Instrument (clause 1);
- the requirements of the 2013 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:

- a) to identify appliances and other products which are appropriate for regulation;
- b) to consult with industry stakeholders and agree requirements based on technical and product-specific considerations; and
- c) 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:

- a) instruments made under the GEMS Act:
  - i) are based on technical and scientific evidence about products' energy use and appropriate test standards, and
  - ii) affect commercial certainty where manufacturers and importers need to adapt to new regulatory requirements, and
- b) 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.