

# **Inter-Governmental Agreement**

**for the**

**Greenhouse and Energy Minimum Standards (GEMS)  
Legislative Scheme**

## **Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme**

**AN AGREEMENT** between:

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth'); and  
The STATE OF NEW SOUTH WALES; and  
The STATE OF VICTORIA; and  
The STATE OF QUEENSLAND; and  
The STATE OF WESTERN AUSTRALIA; and  
The STATE OF SOUTH AUSTRALIA; and  
The STATE OF TASMANIA; and  
The AUSTRALIAN CAPITAL TERRITORY; and  
The NORTHERN TERRITORY OF AUSTRALIA

### **PART 1 - PRELIMINARY**

#### **Preliminaries**

- A. This Agreement is made pursuant to the National Partnership Agreement on Energy Efficiency (NPA-EE), signed by First Ministers in the Council of Australian Governments (COAG) meeting on 2 July 2009.
- B. Attached to the NPA-EE, covering specific agreed actions by jurisdictions, was the National Strategy on Energy Efficiency (NSEE).
- C. COAG agreed in the NSEE 'to establish national legislation for Minimum Energy Performance Standards (MEPS) and labelling, and over time move to add Greenhouse and Energy Minimum Standards (GEMS)'.
- D. This Agreement is intended as a high-level document to guide administration of the national legislation that will implement the measures agreed by COAG. This Agreement sets out the principles and processes for cooperation between the Parties undertaking that administration.
- E. The Parties currently work together on energy efficiency initiatives for equipment and appliances (for example, through the Equipment Energy Efficiency Program under the NSEE).
- F. In entering this Agreement, the Parties recognise a mutual interest in regulating greenhouse and energy standards and labelling for appliances and equipment, and some non-energy using products to be determined, in order to reduce greenhouse gas emissions and improve the efficiency of energy use; and a need to work together to achieve those outcomes.

- G. Nothing in this Agreement should be taken as overriding the provisions of legislation relating to the Scheme.
- H. Nothing in this Agreement should be taken as overriding the provisions of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement.

## Definitions

In this Agreement, unless the contrary intention appears:

**‘Agreement’** means this document and includes any schedules.

**‘Budget matters’** means matters relating to cash funding contributions and overall annual budgets for the Scheme, as provided for in Part 5 of this Agreement.

**‘the Committee’** means the inter-jurisdictional advisory committee described in Part 2 of this Agreement.

**‘Commonwealth Act’** means the *Greenhouse and Energy Minimum Standards Act 2012* of the Commonwealth.

**‘Commonwealth Minister’** means the Commonwealth Minister with portfolio responsibility for the Commonwealth Act, as determined by the Administrative Arrangements Orders.

**‘GEMS requirements’** means performance, labelling, or testing requirements, established for products that use energy or affect the amount of energy used by another product, or requirements related to environmental or health impacts of products subject to performance, labelling or testing requirements, which must be met in order for a product to be supplied or commercially used in Australia. This definition encompasses minimum energy performance standards (MEPS) but excludes requirements set primarily for the purpose of regulating the safety of equipment such as gas and electrical appliances.

**‘Jurisdiction-specific GEMS requirements’** means GEMS requirements set for a product type in one State or Territory, or a number of State or Territories, that differ from, or are not covered by, GEMS requirements set for that product type through a determination under the Commonwealth Act.

**‘Legislation relating to the Scheme’** means parts of Commonwealth, State and Territory Acts, regulations and other subordinate instruments that deal with GEMS requirements and matters related to the administration of GEMS requirements, to the extent they deal with matters related to the administration of GEMS requirements.

**‘Ministerial Council’** means the body referred to in clause 3 having responsibility for this Agreement.

**‘Participating jurisdiction’** means a Party to this Agreement, as recorded in the Signing Page.

**‘Party’** means a signatory to this Agreement, as recorded in the Signing Page.

**‘Regulator’** means the officer appointed by the Commonwealth Minister as Regulator under the Commonwealth Act.

**‘Regulation Impact Analysis (RIA)’** means an assessment of the impact of proposed GEMS requirements conducted in accordance with COAG’s ‘Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies’.

**‘Resolution’** means a decision made by the participating jurisdictions on the Ministerial Council, or its delegates, in accordance with clauses 11 to 13 of this Agreement.

**‘Scheme’** means all legislation enacted by the Commonwealth and other Australian jurisdictions in relation to GEMS requirements, decisions made in accordance with this legislation, as well as this Agreement and all decisions made in accordance with this Agreement.

**‘Standards Committee’** means any committee, established by a standards-setting body such as Standards Australia, involved in the process of developing GEMS requirements.

**‘State’** refers to an Australian State and does not include the Australian Capital Territory or the Northern Territory of Australia.

**‘Statute Law Revision’** means laws made for the purpose of correcting, modernising and simplifying the statute book, which have effect across a range of legislation but the effect is minor and administrative in nature.<sup>1</sup>

**‘Territory’** refers to the Australian Capital Territory and the Northern Territory of Australia but does not include external Territories.

## Objectives

1. The objective of this Agreement is to facilitate and promote the achievement of the Scheme’s objectives.
2. The objectives of the Scheme are to:
  - i. create an effective and nationally-consistent framework for setting GEMS requirements, that will promote:
    - a. reductions in energy consumption, and associated greenhouse gas emissions and energy costs, of Australian households and businesses;
    - b. consideration of energy efficiency and greenhouse gas reduction by Australian households and businesses when making purchasing decisions on products that are subject to GEMS requirements; and
    - c. the development and adoption of new equipment and technologies to improve energy efficiency and reduce greenhouse gas emissions.

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<sup>1</sup> An example of a statute law revision is a law that standardises all legislative references to the Internet through replacing obsolete and inconsistent language.

- ii. ensure the involvement of the Commonwealth, States and Territories in policy development, decision-making, and funding of GEMS requirements, as well as in the delivery of appropriate regulatory functions;<sup>2</sup> and
- iii. utilise the resources of all participating jurisdictions to achieve the best outcomes under (i) above.

## **PART 2 – GOVERNANCE**

### **Ministerial Council**

3. The Ministerial Council responsible for this Agreement is the Council comprising Ministers of each jurisdiction who are responsible for the objectives of the Scheme.

#### *Functions*

4. In relation to the Scheme, the Ministerial Council has the functions conferred on it by COAG, this Agreement and the Commonwealth Act.
5. The Ministerial Council is responsible for policy, planning and implementation of the Scheme including:
  - i. high-level policy matters, such as major changes to the objectives of the Scheme, and proposed amendments to this Agreement;
  - ii. policy development for, and approval of, new or revised GEMS requirements, and timing for their introduction;
  - iii. long-term strategies for particular product types to be covered by the Scheme;
  - iv. forward work plans and reviews of the Scheme; and
  - v. approving decisions on budget matters.
6. The Ministerial Council is also responsible for approving proposed amendments to legislation relating to the Scheme.
7. Apart from clause 13, nothing in this Agreement affects the Ministerial Council's ability to delegate these or other functions related to the management of the Scheme.

#### *Decision-making arrangements for matters under this Agreement*

8. Decisions will generally be made by the Ministerial Council by consensus, in accordance with the Handbook for COAG Councils. All jurisdictions agree to use every effort to ensure a consensus-based decision-making process.
9. Notwithstanding clause 8, the Parties agree that decisions on the following matters must be made by way of a resolution:

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<sup>2</sup> A particular category of policy development and decision-making is the introduction of new or revised GEMS requirements. Principles and processes to be followed in introducing new or revised GEMS requirements are set out in Part 3 of this Agreement.

- i. consent to the content of new or revised GEMS requirements, including jurisdiction-specific GEMS requirements;
  - ii. budget matters;
  - iii. any other matters for which the Commonwealth Act requires the consent of participating jurisdictions;
  - iv. any amendment to legislation relating to the Scheme, other than amendments contained in a Statute Law Revision; and
  - v. any other matters that the Parties agree in writing will be subject to a resolution.
10. All Parties agree that reasonable notice of amendments must be provided when seeking the Ministerial Council's approval, and in the case of a Bill or subordinate legislation, before that Bill is introduced into Parliament or subordinate legislation is submitted to Executive Council for approval. The Ministerial Council cannot delegate the granting of approval to amendments to legislation relating to the Scheme.
11. Each participating jurisdiction has one vote to cast on each resolution.
12. (i) A resolution on a non-budget matter will carry if at least a number of votes equal to the number of participating jurisdictions, less two, are cast in favour of it.
- (ii) A resolution on a budget matter must be decided by unanimous agreement.<sup>3</sup>
13. Except as noted in clauses 10, 52, 60 and 61, the Ministerial Council may, by resolution, delegate the approval of matters that require a resolution, in all cases or on a case-by-case basis. If the participating jurisdictions do delegate the approval of such matters in any case, delegates will apply the voting arrangements outlined in clauses 11 and 12.

*Proceedings of the Ministerial Council*

14. Subject to this Agreement, the Ministerial Council may determine its own proceedings on matters under this Agreement.

**Inter-Jurisdictional Advisory Committee**

*Establishment of the Committee*

15. The Ministerial Council will establish and maintain an advisory committee ('the Committee'), with functions as set out in clause 18.
16. The Committee will consist of up to two representatives from each Party and will be chaired by a Commonwealth representative. The Regulator or a delegate shall be an ex-officio member of the Committee.

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<sup>3</sup> Parties note that New Zealand will be included in voting on budget resolutions. This reflects New Zealand's contribution to the operating budget, which is recorded in the Agreement between Australia and New Zealand and noted in Schedule A to this Agreement.

17. The Committee may resolve from time-to-time to invite external advisers to attend and participate in a meeting of the Committee, without voting rights, where needed to assist the Committee's work.

*Functions of the Committee*

18. The Committee has the following functions:
  - i. To provide advice and technical input to the Ministerial Council, through a committee of Senior Officials, on policy, planning and implementation matters in relation to the Scheme, including budget matters.
  - ii. To advise and provide assistance to the Regulator, to the extent that is possible from available resources and priorities, in the development and regulatory implementation of technical, legal, and administrative aspects of the Scheme.
  - iii. To take lead responsibility for, and coordinate, the national development and implementation of new or revised GEMS requirements, including the development and international harmonisation of test procedures and standards.
  - iv. To coordinate national marketing and communication projects to support GEMS requirements.
  - v. To assess and consider products for possible regulation by way of GEMS requirements.
  - vi. To assist the Ministerial Council and Regulator to monitor the effectiveness of the Scheme.
  - vii. To assist the Ministerial Council and Regulator in consultative processes with industry and other interested parties in the development and implementation of GEMS requirements.
  - viii. To provide advice to the Regulator on targeting Scheme compliance and enforcement activity at certain areas or product types.
  - ix. To provide input into other regulatory and administrative issues.
  - x. To participate on Standards Committees where applicable.
  - xi. To attempt to resolve, in the first instance, any dispute that arises under this Agreement.

**Regulator**

19. The formal functions of the Regulator are set out in the Commonwealth Act. The Parties wish to record their understanding and agreement that the Regulator will not determine the policy agenda for the Scheme but will assist in implementing decisions made by the Ministerial Council, as well as carrying out regulatory responsibilities under the Commonwealth Act.

## **PART 3 – DEVELOPMENT OF NEW AND REVISED GEMS REQUIREMENTS**

### **Interaction with the Commonwealth Act**

20. New or revised GEMS requirements, as agreed to by the Ministerial Council and introduced by the Commonwealth Minister through determinations under the Commonwealth Act, will be binding in all Australian jurisdictions.
21. For the purposes of the Commonwealth Act, any reference to a method for obtaining the consent of participating jurisdictions will be taken to mean a resolution agreed to by participating jurisdictions, or their delegates, in accordance with the decision-making arrangements set out in clauses 11 to 13 of this Agreement.

### **Principles for Developing New and Revised GEMS Requirements**

22. GEMS requirements set under the Scheme should, as far as practicable:
  - i. address market failures that inhibit the uptake of products that lead to more efficient use of energy by households and businesses and reductions in greenhouse gas emissions;
  - ii. promote national consistency in GEMS requirements;
  - iii. allow for effective compliance with and enforcement of GEMS requirements;
  - iv. promote efficiency in the administration of the requirements;
  - v. be consistent with COAG Best Practice Regulation guidelines; and
  - vi. be consistent with Australia's international trade obligations, including giving consideration to trans-Tasman markets and mutual recognition arrangements.

### **Process for Developing New and Revised GEMS requirements**

23. The Committee will have lead responsibility for developing proposals for new or revised GEMS requirements, in consultation with the Regulator and relevant stakeholders.
24. Development of proposals for new or revised GEMS requirements must undergo Regulation Impact Analysis (RIA) as required by COAG's 'Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies'.
25. GEMS requirements will be approved by way of a resolution.
26. The content of the determination agreed to by the Ministerial Council should include an agreed date on which the determination will come into force (noting that the Commonwealth Act provides that if no such commencement date is set then the determination will come into force a fixed period after it is made). The Commonwealth Minister will table the determination in the Commonwealth Parliament as soon as is reasonably practicable after it is made.

## **Jurisdiction-Specific GEMS Requirements**

### Principles

27. The Parties recognise that, notwithstanding clause 22 (ii), there may be exceptional circumstances in which jurisdiction-specific GEMS requirements may be justified – such as critical jurisdiction-specific environmental or infrastructure concerns, or to allow one jurisdiction to lead the way in accelerating the implementation of new or more stringent GEMS requirements.
28. The Parties agree that there will be national agreement (as per the process described in clause 30 (iii) below) on jurisdiction-specific GEMS requirements before they are implemented, and this agreement should be made on the basis that any jurisdiction-specific GEMS requirements are justified according to the national interest (as per the process described in clause 30 below).

### Process

29. One or a number of participating jurisdictions, or the Committee, may develop a proposal for consideration by the Ministerial Council for a new or revised jurisdiction-specific GEMS requirement. The Ministerial Council may agree, by resolution, to fund the development of the RIA for the proposal as part of the GEMS scheme, otherwise the RIA will be funded by the proposing jurisdiction(s).
30. The Parties agree that jurisdiction-specific GEMS requirements for a product type will only be introduced if:
  - i. the proposed requirements have been subject to a transparent and consultative RIA process;
  - ii. the RIA is undertaken in accordance with COAG's 'Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies', including consideration of the potential effect of the proposed requirement on all participating jurisdictions and demonstration of a net benefit for the community in the adoption and implementation of the proposed requirement; and
  - iii. the jurisdiction-specific GEMS requirement is approved, after the RIA is completed, by way of resolution.
31. If a jurisdiction-specific GEMS requirement is agreed to by the participating jurisdictions, it is to be implemented and enforced by State or Territory laws in the relevant jurisdiction(s).
32. The Parties note that any agreement to a jurisdiction-specific GEMS requirement remains subject to rights and obligations under the COAG Mutual Recognition Agreement and the *Mutual Recognition Acts* of the Parties and the Trans-Tasman Mutual Recognition obligations, and other international trade obligations.

## **PART 4 – ADMINISTRATION**

### **Regulatory Arrangements**

33. Jurisdictions will work together and will allocate sufficient in-kind resources, and identify the most effective use of these resources to effectively implement the Scheme.
34. The Regulator may contract with some of the Parties for the delivery of some regulatory tasks, such as the processing of registration applications and monitoring compliance with the requirements of the Scheme. In contracting for these services, the Regulator will be guided by the need to promote:
  - i. value for money;
  - ii. effectiveness of service delivery;
  - iii. consistency of the service provided across Australia; and
  - iv. sufficient certainty and notice being provided to those Parties delivering the service, to allow for workforce planning.

### **Exchange of Information**

35. The Regulator will provide Parties with access to publicly available and, where permitted by law, confidential information held by the Regulator in connection with the administration and enforcement of the Scheme.
36. Each Party will exchange with the other Parties such information in relation to the administration of the Scheme as is necessary, and permitted by law, to facilitate:
  - a. the effective operation of the Scheme;
  - b. monitoring the success of the Scheme; and
  - c. the functions of the Committee.

### **Regulatory Officers**

37. The Parties acknowledge that efficient and effective administration, compliance and enforcement activities for the Scheme may be promoted through the Regulator delegating some of his/her powers to officers of other jurisdictions, or through, State and Territory regulatory agencies conferring some of their powers on to the Regulator.
38. Such delegation and conferral will only take place with the consent of both the receiving jurisdiction and the granting jurisdiction, and only to the extent permitted by the laws of both jurisdictions. A fee for service may be negotiated.

## **PART 5 – FINANCIAL ARRANGEMENTS**

### **Funding and Resourcing**

39. The Parties recognise that this Agreement builds on existing government programs at a Commonwealth, State and Territory level and substantial investments and commitments made by all Parties to driving energy efficiency in their own jurisdictions.

40. The Parties agree to ensure that sufficient cash funds and other resources are allocated to achieve the objectives of the Scheme and this Agreement, subject to normal jurisdictional budget processes.
41. Cash funding contributions will be made on a proportional basis, with 50 per cent of Australian funding provided by the Commonwealth Government and 50 per cent of Australian funding provided by State and Territory Governments that are Parties to this Agreement, on a per capita basis. The per capita allocation of contributions among States and Territories will be based on the most recent population statistics published by the Australian Bureau of Statistics (ABS).
42. Agreed cash contribution levels for the first year of the Scheme's operation are set out in Schedule A of this Agreement. The contributions set out in Schedule A take into account an expected contribution from New Zealand, agreed to with the Commonwealth under a separate Inter-Governmental agreement. Schedule A also sets out indicative, though not agreed, cash contribution levels for the second, third and fourth year of the scheme.
43. The Parties will work together, seeking consensus where possible, on a level of cash funding that the Ministerial Council agrees is reasonably required each year, after the first year, for the effective ongoing operation of the Scheme.
44. Budgets and cash funding contribution levels for years beyond the first four years of the Scheme's operation, and any variations from the indicative budgets for the second, third and fourth years set out in Schedule A, will be approved by way of a resolution.
45. Any one of the Parties is entitled to voluntarily contribute more than their allocated cash contribution to an annual budget, and the act of making any such additional voluntary contribution would not by itself breach the terms of this Agreement.

### **Special Account**

46. For the purposes of the Scheme, the cash contributions of the Parties will be credited to a Special Account as contemplated by section 21 of the Commonwealth *Financial Management and Accountability Act 1997*.
47. An amount equivalent to the fee revenue collected from persons lodging applications under the Scheme will also be credited by the Commonwealth to this Special Account.
48. These Special Account funds will be quarantined for the use of the Scheme.
49. Any balance of the Special Account, including any interest that may have been earned, not spent in a given financial year will be rolled over into the following year. These monies will be taken into consideration in determining the cash funding required from jurisdictions for the following year.
50. The Commonwealth will provide an annual report to the Ministerial Council summarising contributions received into the Special Account and expenditures paid from the Special Account. This report will be made available within six months of the

close of the financial year. This report will not be made public unless the Parties agree that it is appropriate to do so.

## **PART 6 –REVIEW**

### **Review**

51. The Parties commit to commence a review of the operation of this Agreement no later than the third anniversary of the commencement of the Commonwealth Act, or earlier as agreed by the Ministerial Council. This review shall include consideration of ongoing cash funding requirements based on experience during the first years of the Scheme's operation.

### **Amendment or Variation to the Agreement Provisions**

52. Any of the terms of this Agreement, including arrangements for dealing with budget matters, may be amended or varied at any time if agreed to by all the Parties in writing. The Ministerial Council cannot delegate the decision to amend or vary.

## **PART 7 – DISPUTE RESOLUTION**

### **Funding and Resourcing**

53. If one Party does not pay all or part of its contribution to cash funding as agreed to in any year by the Ministerial Council, the other Parties may consider termination of this Agreement under Part 8 although they would not be obliged to do so. Other options that the Parties may consider in these circumstances include, but are not limited to:
  - a. seeking an undertaking from the under-paying jurisdiction to make good on the underpayment at a future time; and
  - b. constructively exploring other ways to maintain the operation of this Agreement despite any short-term disagreements over funding.

### **Informal Dispute Resolution**

54. The members of the Committee will negotiate to resolve a dispute that arises under this Agreement.

### **Referral to Ministerial Council or COAG**

55. Where the Committee is unable to resolve a dispute, the dispute may be brought to a committee of Senior Officials that reports to the Ministerial Council.
56. If the committee of Senior Officials is unable to resolve a dispute, a Party may refer the dispute to the Ministerial Council for consideration.
57. If the Ministerial Council is unable to resolve a dispute, the Ministerial Council may refer the dispute to COAG for consideration.

## **PART 8 – WITHDRAWAL AND TERMINATION**

### **Withdrawal**

58. A Party may withdraw from this Agreement by giving the other Parties at least six months notice, in writing, of its intention to withdraw from this Agreement.
59. In the event of one or more Parties withdrawing from this Agreement, the remaining Parties may choose to continue under this Agreement or to negotiate a replacement Agreement.

### **Termination**

60. This Agreement may be terminated at any time if agreed to by all the Parties in writing. The Ministerial Council cannot delegate the decision to terminate.
61. If any of the Parties breach their obligations under this Agreement, this Agreement may be terminated if agreed to by all the other Parties in writing. The Ministerial Council cannot delegate the decision to terminate.
62. If this Agreement is terminated, a replacement Agreement may be negotiated.
63. This Agreement is automatically terminated if a replacement Agreement is negotiated and signed into effect.
64. Upon termination or dissolution of this Agreement, any unspent funds will be returned to the Parties in accordance with the proportion in which they were contributed, unless otherwise agreed to unanimously by all participating jurisdictions.

## **PART 9 – COMMENCEMENT**

### **Commencement**

65. The Agreement will commence on 1 October 2012.

SCHEDULE A – BUDGETS AND CASH CONTRIBUTION LEVELS 2012-2016

Program funding to 31 December 2012 will be sourced from existing resources. If additional program funding is required for the period 1 January 2013 to 30 June 2013, the Parties will contribute the following amounts upon receipt of a call for funding for that period (pro rata for any lesser period specified in the call for funding):

Jurisdiction	Cth	NSW	ACT	NT	QLD	SA	TAS	VIC	WA	New Zealand*	TOTAL**
Contribution (AUD millions)	0.944	0.305	0.015	0.0095	0.191	0.069	0.0215	0.2345	0.0975	0.348	2.235

The Parties further agree to the following indicative operating budgets of non-staff costs in the years 2013-16 (all in AUD millions, inclusive of New Zealand's contributions):

Year	2013-14	2014-15	2015-16
Indicative total budget	\$4.882	\$5.601	\$6.461

Exact budgets and funding contribution levels for each Party for the years 2013-2016 will be set in accordance with Part 5 of this Agreement.

\*Note: New Zealand is not a Party to this Agreement but will contribute AUD0.348 million to the operating budget for the period 1 January 2013 to 30 June 2013 under a separate agreement (pro rata for any lesser period).

\*\*Note: The total operating budget for 2012-2013 is forecast with the participation of all jurisdictions. If any jurisdiction does not become a Party to this Agreement, the total will be reduced by that Party's contribution and the contributions of other Parties remain unaffected.

## **Signing page**

Signed for and on behalf of each of the parties:

**Signed for and on behalf of the Commonwealth of Australia by**

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**The Honourable Greg Combet AM MP**  
Minister for Climate Change and Energy Efficiency  
Date:

**Signed for and on behalf of the State of New South Wales by**

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**The Honourable Robyn Parker MP**  
Minister for the Environment  
Date:

**Signed for and on behalf of the State of Queensland by**

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**The Honourable Mark McArdle MP**  
Minister for Energy and Water Supply  
Date:

**Signed for and on behalf of the State of South Australia by**

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**The Honourable Tom Koutsantonis MP**  
Minister for Mineral Resources and Energy  
Date:

**Signed for and on behalf of the Australian Capital Territory by**

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**The Honourable Simon Corbell MLA**  
Minister for Environment and Sustainability  
Date:

**Signed for and on behalf of the State of Victoria by**

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**The Honourable Michael O'Brien MP**  
Minister for Energy and Resources  
Date:

**Signed for and on behalf of the State of Western Australia by**

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**The Honourable Peter Collier MLC**  
Minister for Energy  
Date:

**Signed for and on behalf of the State of Tasmania by**

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**The Honourable Cassy O'Connor MP**  
Minister for Climate Change  
Date:

**Signed for and on behalf of the Northern Territory of Australia by**

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**The Honourable Terrence Kennedy Mills MLA**  
Minister for Lands, Planning and the Environment  
Date: