

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

Variation Agreement No.1

Details

Date

_____/_____/_____
day month year

Parties

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

1. Background

- (a) On 1 October 2012, the Parties entered into the Inter-Governmental Agreement for the Greenhouse and Energy Minimum Standards (**GEMS**) Legislative Scheme (**GEMS IGA**)
- (b) There are two policy concerns:
 - (i) the GEMS Regulator's autonomy; and
 - (ii) the GEMS Regulator's ability to cost recover for regulatory functions.
- (c) The GEMS Regulator needs to operate, and be seen to operate, independently to maintain public confidence in the objectivity and impartiality of the GEMS Regulator's decisions.
- (d) GEMS Regulator activities are currently funded from three sources:
 - (i) Commonwealth Administered funding;
 - (ii) contributions from all jurisdictions party to the GEMS IGA; and
 - (iii) funding from New Zealand under a bilateral arrangement with Australia.¹
- (e) With the establishment of the GEMS IGA and *Greenhouse and Energy Minimum Standards Act 2012*, the intention was that, over time, the program would move towards full cost recovery for GEMS Regulator functions (registration and compliance), including staffing costs. The *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* (GEMS (Registration Fees) Act) was enacted to impose fees that are intended to cover both the cost of processing registration applications and the cost of compliance monitoring: see GEMS (Registration Fees) Act, s 9.

¹ Under this bilateral agreement, New Zealand contributes funding to programme administrative activities which are required to maintain the *Energy Efficiency (Energy Using Products) Regulations 2002*.

- (f) Under clause 47 of the GEMS IGA, the Commonwealth is required to transfer an amount equivalent to the revenue collected by the GEMS Regulator to a special account. Currently the GEMS IGA and other decisions do not permit the Energy Special Account funds to be used to fund Commonwealth staff for administering the regulation and compliance activities. The GEMS Regulator's functions cannot be fully cost recovered under the current arrangements.
- (g) This amendment removes the requirements for the Commonwealth to transfer an amount equivalent to the registration fees to the Energy Special Account by deleting clause 47 from the GEMS IGA.
- (h) Separate to this amendment, it is proposed that the Energy Council agree, by way of a Council decision, that the Commonwealth fund all the costs of the GEMS Regulator (to deliver product registration and compliance) and the Commonwealth retain the fees from product registration applications as an offset to GEMS Regulator costs, and that all jurisdictions who are party to the GEMS IGA (and New Zealand) fund non-regulatory development work through contributions made to the Energy Special Account.
- (i) Together this amendment and the Council decision will enhance the GEMS Regulator's financial independence and autonomy, and help move towards full cost recovery for the GEMS Regulator.
- (j) The Parties have agreed to vary the terms of the GEMS IGA in accordance with this Variation Agreement.

2. Defined terms

In this agreement, unless the contrary intention appears:

- (a) a word or expression defined or referred to in the IGA has the meaning given to it in the GEMS IGA;
- (b) **GEMS IGA** means the Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme described in paragraph 1(a) of the Background;
- (c) **Variation Agreement** means this agreement, including all annexures and schedules to it; and
- (d) **Effective Date** means 1 June 2016.

3. Variation to GEMS IGA

On and with effect from the Effective Date, the GEMS IGA is varied by deleting Clause 47 and (as the following clauses will not be renumbered) replaced with:

“47. [Not used].”

4. Affirmation of GEMS IGA

The parties affirm in all other respects the covenants and conditions in the GEMS IGA as varied by this Variation Agreement.


5. Counterparts

This Variation Agreement may be executed in counterparts. All executed counterparts constitute one document.

Signing page

Signed for and on behalf of each of the parties:

Signed for and on behalf of the Commonwealth of Australia by



The Hon Josh Frydenberg MP
Minister for Resources, Energy and Northern
Australia

Date: **3/5/16**

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

The Honourable Anthony John Roberts MP
Minister for Industry, Resources and Energy
Date:

Signed for and on behalf of the State of Queensland by

The Honourable Mark Bailey MP
Minister for Main Roads, Road Safety and Ports and
Minister for Energy and Water Supply
Date:

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

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

Signed for and on behalf of the State of Victoria by

The Honourable Lily D'Ambrosio MP
Minister for Energy and Resources
Date:

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

The Honourable Dr Mike Nahan MLA
Minister for Energy
Date:

Signed for and on behalf of the State of Tasmania by

The Honourable Matthew Groom MP
Minister for the Environment, Parks and Heritage
Date:

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

The Honourable Simon Corbell MLA
Minister for Environment and Climate Change
Date: