

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 239

Issued by the Authority of the Parliamentary Secretary for Climate Change and Energy
Efficiency

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards Regulation 2012

Section 177 of the *Greenhouse and Energy Minimum Standards Act 2012* (the Act) permits the Governor-General to make regulations prescribing matters required or permitted by the Act, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act implements the commitments of the Australian Government and the Council of Australian Governments to establish national legislation to regulate energy efficiency and labelling standards for appliances and other products. The Act establishes a national framework for Australia's existing Equipment Energy Efficiency (E3) Program, to regulate the energy efficiency of products supplied or used within Australia. Products that may be regulated under the Act include any products that use energy, whether gas, electricity, or fuel, and products that affect the energy use of other products, such as insulation, window glass, and air-conditioner ducting.

The Act permits the Australian Government to set mandatory minimum efficiency requirements for products, to drive greater energy efficiency for regulated products. The Act also allows the Australian Government to set nationally-consistent labelling requirements, so that Australians can compare the energy efficiency of products and make informed purchasing decisions. The national framework will replace seven state and territory legislative frameworks, harmonising Australia's E3 Program.

The Act obliges persons who supply regulated product models, or use regulated product models for commercial purposes, to ensure that product models meet relevant efficiency requirements. The Act also obliges persons who supply or use regulated product models to register their product models with the Greenhouse and Energy Minimum Standards (GEMS) Regulator. These obligations are consistent with the existing E3 Program.

The *Greenhouse and Energy Minimum Standards Regulation 2012* (the Regulation) prescribes the contact details that a person is required to provide when applying to register a product model under the Act. This will ensure that applications are accompanied by sufficient information to allow the GEMS Regulator to contact the applicant when necessary. The Regulation also prescribes the processes that are required for the Regulator to exempt product models from the need to meet obligations under the Act. This will ensure that applications for exemption are relatively consistent, and will also ensure that the Regulator's decision-making process is consistent and transparent.

The Regulation would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

The Australian Government conducted extensive consultation with Australian businesses throughout the development of the Act, as well as consulting with the governments of New Zealand and Australian states and territories, all of which participate in the twenty-year old E3 Program.

Consultation with government agencies involved with the E3 Program informed the matters prescribed by the Regulation, particularly the appropriate process for granting exemptions from energy efficiency regulations.

The matters prescribed by the Regulation in relation to contact persons largely replicate the existing requirements under the E3 Program, with an additional requirement that a person applying to register products under the Act must nominate at least one contact person that is an employee or officer of the applicant. This will help to ensure that communications with the contact person are received by the applicant. The need for effective communication between the GEMS Regulator and regulated businesses was raised in consultation with business and government agencies, given past difficulties communicating with applicants and registrants under the E3 Program.

Authority: Section 177 of the
Greenhouse and Energy Minimum Standards Act 2012

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Greenhouse and Energy Minimum Standards Regulation 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Greenhouse and Energy Minimum Standards Regulation 2012* prescribes matters relating to applications and exemptions under the *Greenhouse and Energy Minimum Standards Act 2012*. The Regulation establishes requirements relating to the form of applications, and the processes by which the GEMS Regulator must assess applications for exemptions under the Act. These administrative matters are to improve the consistency of applications and decisions under the Act, and do not materially alter the obligations imposed under the Act or impinge on human rights issues.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon Greg Combet AM MP
Minister for Climate Change and Energy Efficiency
Minister for Industry and Innovation

Detailed description of provisions in the Regulation

Part 1 Preliminary

1.1 Name of regulation

Regulation 1.1 establishes the title of the Regulation, the *Greenhouse and Energy Minimum Standards Regulation 2012*.

1.2 Commencement

Regulation 1.2 sets out the commencement arrangements for the Regulation, which commences on the day after it is registered on the Federal Register of Legislative Instruments.

1.3 Definitions

Regulation 1.3 defines certain terms used in the Regulation, to assist with interpretation.

Part 4 GEMS Determinations

Division 4.1 Exempting model of GEMS products from GEMS Determination

Regulation 4.1.1 Purpose of Division

Regulation 4.1.1 outlines the purpose of Division 4.1, which sets out the circumstances in which the GEMS Regulator may exempt product models from having to meet requirements under the Act.

Regulation 4.1.2 GEMS Regulator may exempt model of GEMS product from requirements of GEMS Determination

Regulation 4.1.2 clarifies that the GEMS Regulator may grant an exemption under section 37 of the *Greenhouse and Energy Minimum Standards Act 2012* upon the request of certain parties with obligations under the Act, or at the GEMS Regulator's discretion. This ensures the GEMS Regulator can respond to specific requests relevant to individual cases, or can pre-empt the need for people to request an exemption if broader issues recommending an exemption are identified.

4.1.3 Application for exemption

Regulation 4.1.3 sets out the requirements for a valid application for an exemption. To be valid, an application must be in a form approved by the GEMS Regulator, which will improve the consistency of applications and the decision-making process. An application also must be accompanied by required contact details for the applicant, which are set out in subregulation 4.1.3(2), as well as detailed reasons for the exemption and any supporting documentation, to inform the decision-making process.

4.1.4 GEMS Regulator may request further information or documentation

Regulation 4.1.4 permits the GEMS Regulator to request information additional to the information required under regulation 4.1.3, if additional information is reasonably necessary to inform the decision-making process. The Regulation does not impose a timeframe for reply but the GEMS Regulator may refuse to consider an application for an exemption until the additional information requested is provided by an applicant.

Regulation 4.1.5 Matters to which GEMS Regulator must have regard

Regulation 4.1.5 requires the GEMS Regulator to consider certain matters when considering an application for an exemption under the Act.

The GEMS Regulator must consider the impact that each exemption may have on Australia's greenhouse gas emissions, to ensure the requested exemption does not undermine the objectives of the Act.

The GEMS Regulator also must consider the application for exemption in the context of the grounds for imposing GEMS requirements on the product type(s) to which the application for exemption applies. As with other regulatory decisions in Australia, the grounds for imposing GEMS requirements, and other matters considered in the decision, will be set out in the Regulation Impact Statement on which a decision to regulate is based.

These requirements ensure that decisions to grant an exemption are made with regard to the objectives of measures to improve energy efficiency.

Regulation 4.1.6 Matters to which GEMS Regulator may have regard

Regulation 4.1.6 permits the GEMS Regulator to consider information beyond the information required by regulation 4.1.5, when considering an application for exemption under the Act. Regulation 4.1.6 ensures the GEMS Regulator may have regard to any information that is relevant to the application and decision to grant an exemption, and also highlights specific issues the GEMS Regulator may consider in the decision-making process. These issues include the compliance costs to the applicant if the exemption is not granted, and whether the impact of an exemption on greenhouse gas emissions can be minimised to deliver a reasonable outcome for the applicant.

Regulation 4.1.7 Notice of decision about exemption

Regulation 4.1.7 prescribes matters relating to the provision of notices of decisions regarding an application for an exemption under the Act. The GEMS Regulator is required to provide an applicant with notice of a decision as soon as practicable after making a decision. Consistent with section 68 of the Act, a notice that is provided to the applicant's nominated contact person(s) is deemed to be provided to the applicant.

Part 5 Registering models of GEMS products

Regulation 5.1 Contact requirements and details

The Act requires suppliers and commercial users of regulated products to register product models with the GEMS Regulator. As part of the application process, section 42 of the Act

requires an applicant for registration to nominate at least one person to serve as a contact for communications related to the application, or other matters.

Regulation 5.1 provides the minimum requirements for a contact person. An applicant must nominate at least one contact person that is an officer or employee of the applicant and the nomination must include the contact details specified in subregulation 5.2.

An applicant that has nominated a contact person that meets the requirements of regulation 5.1 may nominate additional contact persons that do not meet the requirements of regulation 5.1. For example, a company that nominates an employee who is located overseas as the primary contact person may wish to nominate a person who is not an employee but an agent located in Australia as a second contact person, to facilitate communications with the GEMS Regulator.