

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources, Energy and Tourism

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Computers) Determination 2013

Purpose

The *Greenhouse and Energy Minimum Standards (Computers) Determination 2013* (**Determination**) establishes minimum energy efficiency and product performance requirements, and associated requirements for conducting tests, for computers.

Background

The *Greenhouse and Energy Minimum Standards Act 2012* (**Act**) establishes a national framework for regulating the energy efficiency of products supplied or used within Australia, implementing Australian Government and the Council of Australian Governments (**COAG**) commitments to establish national legislation to regulate energy efficiency and labelling standards for appliances and other products. The national legislation 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, to increase Australians' awareness of options to improve energy efficiency and reduce energy consumption, energy costs and greenhouse gas emissions. The national framework replaced seven state and territory legislative frameworks, harmonising the regulation of equipment energy efficiency.

Historically, Minimum Energy Performance Standards (**MEPS**) and energy labelling requirements were set out in Australian or Australian/New Zealand Standards and incorporated by reference in regulations, which were usually made under the relevant state or territory electrical safety legislation. Over time the COAG Equipment Energy Efficiency Program (**E3 Program**) developed the practice of setting the requirements by reference to the relevant Australian or Australian/New Zealand Standards. This practice has been continued in this Determination.

Selected definitions and text are extracted in the Determination from the relevant Australian or Australian/New Zealand Standards. This is done with the intention of making it possible to determine if a product is covered (or excluded) by the Determination without having to refer to the relevant standard.

MEPS requirements, or energy use requirements, relate to requirements for the minimum allowable energy efficiency of a product. They provide an energy efficiency 'floor' for that product type, below which individual models of that product type cannot be sold. The level of the floor can be raised over time, providing a means of raising the average energy efficiency of the product type.

Energy labelling requirements primarily relate to requirements for the display of energy rating labels, such as those commonly seen on products including refrigerators, dishwashers and televisions, amongst others. Energy rating labels allow consumers to compare the energy consumption of similar products, and factor

potential cost savings into their purchasing decision. There are no energy labelling requirements set in this Determination.

Other regulatory requirements possible under the Act include requirements relating to high efficiency levels, product performance, and the impact of the product on the environment or the health of human beings. Of these types, only product performance requirements are set in this Determination. Product performance requirements are intended to ensure that minimum efficiency requirements or a higher number of stars on an energy rating label are not achieved by reducing the effectiveness of the product in its primary function. An example of this is the setting of minimum requirements for soil removal for clothes washers.

Legislative basis

Under subsection 23(1) of the Act the Minister may, by legislative instrument, make a determination (a GEMS determination) that specifies one or more classes of products if the products in those classes use energy or affect the amount of energy used by other products. A GEMS determination is the vehicle by which energy efficiency requirements (GEMS level requirements), energy labelling requirements (GEMS labelling requirements) for classes of products and other requirements for a product class are established.

Under section 25 of the Act the GEMS level requirements specified in a GEMS determination may be:

- requirements relating to one or more of the following:
 - the amount of energy used in operating products in relevant product classes;
 - the amount of greenhouse gases resulting from operating products in the relevant product class;
 - the effect of those products on the amount of energy used by operating other products; and
- requirements for conducting tests in relation to products in the relevant product class in order to determine whether the products meet the specified requirements.

Under section 27 of the Act other requirements that may be specified in a GEMS determination are:

- requirements for products in the relevant product class to meet a specified level (the high efficiency level);
- requirements relating to the performance of products in the relevant product class;
- requirements relating to the impact of products in that product class on the environment or on the health of human beings;
- requirements for conducting tests in relation to products in the relevant product class in order to determine whether the products meet the specified requirements; and
- requirements of a kind specified in the regulations for the purposes of this paragraph.

Consultation

The Australian Government conducted extensive consultation with the computer industry throughout the development of the regulatory approach to computers reflected in this Determination. Dialogue with key stakeholder groups about regulatory intervention started in 2005, with negotiations on the substance of the possible regulation commencing in 2007. The dialogue continued until 2011.

A Consultation Regulatory Impact Statement (**RIS**) covering both computers and computer monitors, prepared in accordance with COAG best practice regulation requirements, was released for public comment in October 2010. Submissions were received from two industry associations and one multinational computer company. There were no submissions from user groups, consumers or consumer advocacy groups or other companies, possibly reflecting the lengthy consultations preceding the consultation RIS and general support from those stakeholders who have been involved in discussing the regulatory proposals for many years.

Submissions did not provide additional data nor propose alternatives to the regulatory proposals presented in the Consultation RIS. Some concerns were raised in relation to the proposals for computers, in particular concerning the registration process and the impact that regulation would have on low volume segments of the market. In response it was agreed that:

- products could be registered using in-house test reports conducted to the relevant standard;
- a working group made up of representatives from industry, government and regulatory authorities would be established to address registration and regulation issues before the regulations commenced; and
- a deemed-to-comply category would be created for low volume products which would allow manufacturers and suppliers to use highly efficient power supplies as a means of demonstrating MEPS compliance.

Regulatory Impact

A comprehensive COAG Decision RIS was prepared, incorporating the industry feedback on the Consultation RIS and the agreed subsequent modifications, and presented to the Select Council on Climate Change (**SCCC**) for approval in February 2013. The SCCC agreed to adopt the recommended regulatory approach presented in the Decision RIS on 21 February 2013.

Detailed description of the Determination

Details of the Determination are set out at Attachment A.

Statement of compatibility with human rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the Determination

Section 1 – Name of Determination

This section sets out the title of the Determination.

Section 2 – Commencement

This section provides that the Determination commences on 1 October 2013.

Section 3 – Definitions

This section sets out definitions for key terms used in the Determination. The definitions include:

- definitions relating to the various Australian/New Zealand Standards referenced in the Determination; and
- definitions of the terms “computer”, “desktop computer”, “integrated desktop computer”, “notebook computer”, “tablet computer”, “small-scale server” and “external power supply”, which are given the same meanings as in Australian/New Zealand Standard AS/NZS 5813.1:2012; and
- definitions of the terms “digitizer”, “game controller”, “keyboard” and “mouse”, which, despite having generally accepted meanings in the industry, are defined in the Determination for the purposes of clarity.

Section 4 – Interpretation

Section 4 provides guidance for interpreting certain aspects of the Determination.

Subsection 4(1)

The purpose of this subsection is to avoid any inconsistency in terminology between the Determination (and other elements of the GEMS legislation) and the standards referenced in section 3 of the Determination. It indicates that where a term used in the Determination is not defined in any part of the GEMS legislation, but is defined in a standard referenced in section 3, for the purposes of the Determination the term has the meaning set out in the applicable standard.

Subsection 4(2)

Unless otherwise specified, the applicable version of a document incorporated by reference in a legislative instrument is the version that existed on the date the instrument came into force. This is made clear for standards specifically referenced in section 3 of the Determination. However, often these standards refer to other standards or documents which also contain requirements that must be applied to give effect to the Determination or a standard referred to in the Determination. The purpose of this subsection is to make clear that the applicable version of these further documents is also the version that existed on the day the Determination came into force.

Section 5 – Specified product classes covered by the Determination

Section 5 sets out the scope of the Determination with respect to the class of products that it covers.

Subsection 5(1)

Subsection 5(1) provides that the Determination covers computers, as defined in section 3, designed to be connected to 230 or 240 volts main voltage in the product classes established in the table for that purpose. There are four product classes established, based on the types of computer set out in subsection 3(3).

Subsection 5(2)

This subsection sets out product classes that are not covered by the Determination. These are largely special purpose products that are not used for general computing applications, such as hand-held computing or gaming devices, workstations, and larger servers.

Section 6 – GEMS level requirements

Section 6 specifies GEMS level requirements for energy use for computers covered by the Determination, including requirements for conducting tests in order to demonstrate compliance with the energy use requirements, under section 25 of the Act.

Subsection 6(1)

This subsection provides that energy use requirements, other than for a deemed-to-comply computer, are:

- for products in product classes 1 to 3, those set out in clauses 4.5.1 and 4.5.2 of AS/NZS 5813.2.2:2012; and
- for products in product class 4, those set out in subclause 4.5.3 of AS/NZS 5813.2:2012.

Subsection 6(2)

This subsection defines *deemed-to-comply computer* to mean no more than 200 computers of the same model that have been or will be supplied in a given year.

Subsection 6(3)

This subsection provides that the energy use requirements for a deemed-to-comply computer are the requirements set out in clause 4.4 of AS/NZS 5813.2:2012.

Subsection 6(4)

This subsection specifies that the requirements for conducting tests for products covered by this Determination, other than deemed-to-comply computers, are the requirements mentioned in section 2 and section 3 of AS/NZS 5813.2:2012.

Subsection 6(5)

This subsection specifies that the requirements for conducting tests for deemed-to-comply computers are:

- for products with a direct connection to mains power—the requirements mentioned in sections 2 to 4 of AS/NZS 5814.1:2012; and
- for products powered by an external power supply—the requirements mentioned in subsection 6(2) to 6(4) of the *Greenhouse and Energy Minimum Standards (External Power Supplies) Determination 2012*.

Section 7 – GEMS labelling requirements

There are no GEMS labelling requirements for products covered by this Determination.

Section 8 – Other GEMS requirements

Section 8 specifies other GEMS requirements in relation to product performance for computers covered by the Determination, including requirements for conducting tests in order to demonstrate compliance with the product performance requirements, under section 27 of the Act.

These performance requirements are intended to prevent products entering the Australian market that are designed to meet GEMS requirements but are unfit for the product's intended purpose.

Subsection 8(1)

This subsection provides that the product performance requirements are those set out in section 4.3 (Network and Power Management Requirements) of AS/NZS 5813.2:2012.

Subsection 8(2)

This subsection specifies that the requirements for conducting tests are those set out in section 2 and section 3 of AS/NZS 5813.2:2012.

Section 9 – Family of models

Section 28 of the Act provides that a GEMS determination must specify, for each product class covered by the determination, the circumstances in which two or more models in that product class are in the same family of models.

Subsection 9(1)

This subsection specifies the circumstances in which two or more models of computer monitors covered by this Determination may be in the same family of models. This subsection operates subject to subsection 9(2).

The specified circumstances are those set out in clause 1.5.7 of AS/NZS 5813.2:2012.

Subsection 9(2)

This subsection has the effect that for the purposes of subsection (1) a family of models may consist of no more than 10 models.

Section 10 – Product categories

Section 29 of the Act requires that a GEMS determination specify whether the products it covers are category A or category B products. Category B products are subject to higher penalties than category A products for certain offences under the Act, on the basis that category B products have a high impact on energy use or greenhouse gas production.

Section 10 specifies that computers covered by the Determination are category A products.

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 (Computers) Determination 2013

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 (Computers) Determination 2013* prescribes matters relating to minimum energy efficiency and requirements for computers under the *Greenhouse and Energy Minimum Standards Act 2012*. The Determination establishes requirements for energy use and product performance, including requirements for conducting tests in order to demonstrate compliance with those requirements. The Determination also sets out the circumstances in which two or more models in a product class may be a family of models, and establishes the applicable product category for the purposes of calculating certain penalties under the Act.

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 Gary Gray AO MP
Minister for Resources, Energy and Tourism**