



E3 Information Handling Policy (Australia)

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Version 1.0



and New Zealand Governments.

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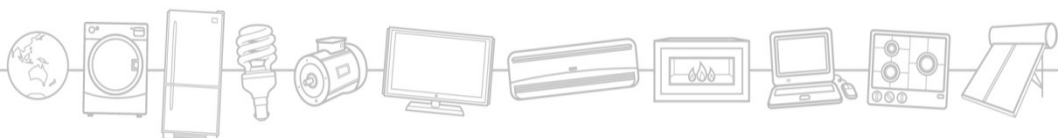
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1.Introduction

On 1 October 2012, the legislative basis for the Equipment Energy Efficiency (E3) Program in Australia transferred to a single national platform under the *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* (the Act). The Act regulates the energy efficiency of nominated products in Australia¹.

The Act harmonises the E3 Program and addresses inconsistencies that had arisen across different state laws. It reduces red tape for businesses by replacing seven state and territory legal frameworks with one national law, and four state regulators with one national regulator – the Australian GEMS Regulator (the Regulator). The Act also allows for the future expansion of the E3 Program that will drive efficiency gains across a greater range of products.

The Act authorises the Regulator to obtain a range of information – such as test reports and sales data. The Regulator is aware of the potentially sensitive nature of some of this information and is committed to protecting it. This *Information Handling Policy* (the Policy) outlines the following:

- data that can be requested under the Act;
- legislative provisions for protecting information;
- information technology protection of information;
- authorised disclosure of protected information;
- guidelines for the disclosure of protected information; and
- guidelines for aggregating information so that individual information cannot be identified.

2.Data that can be requested under section 56 of the Act

This Policy covers the treatment of all potentially commercially sensitive information obtained under the Act, but pays particular attention to the protection and use of data obtained under Section 56. Section 56 of the Act authorises the Regulator to request reporting of the number of products imported, manufactured, sold or exported by a business that has registered a product model under the Act. The information will assist the E3 Program in:

- measuring the progress of appliance markets towards greater efficiency and identifying those areas in which further intervention is required to drive greater efficiency;

¹ Note the E3 Program also operates in New Zealand but on a different legislative basis.

- informing consideration of any extension or reduction of the statutory notice period before commencement of GEMS determinations;
- monitoring whether or not products that do not comply with a new standard are being stockpiled for sale into the future;
- evaluating the effectiveness of existing regulations, future regulations and the accuracy of past projections of energy use and savings; and
- targeting compliance checks to product areas and industry sectors.

The primary reason for obtaining this data is for the administration and function of Australia's E3 Program. Obtaining this information directly from businesses is necessary because other sources are less reliable for example aggregate commercial sales data is available for some products, but it is limited in coverage, and stakeholders have advised that it is not always comprehensive or up to date.

The power under section 56 of the Act is similar to obligations under New Zealand's energy efficiency legislation. The Regulator will endeavour to align closely with New Zealand agency policies as far as reasonably practicable, to minimise differences in requirements for companies trading in both countries.

3. Legislative provisions on protecting information

The Act institutes strict controls on the handling of commercially sensitive information. '*Commercially sensitive information*' is information which, if it was disclosed, might result in substantial prejudice to the commercial interests of a person. The safeguards in the Act apply to all commercially sensitive information obtained under the authority of the Act, not just to sales and import data obtained under Section 56. The safeguards in the Act are:

- it is an offence for any government officer to share commercially sensitive information obtained under the Act for reasons not authorised under the Act (Section 169); and
- commercially sensitive information obtained under the Act is prohibited from being disclosed in courts or tribunals, other than for the purposes of the Act (Section 171).

These legal safeguards are supported by administrative practices outlined in this Policy.

4. Information technology protection of information

Information provided to the Regulator will be lodged via the Energy Rating website (www.energyrating.gov.au) and stored within systems managed by the Department of Climate Change and Energy Efficiency (DCCEE - the Department within which the Regulator resides).

The Energy Rating website is jointly managed by the Commonwealth, State and Territory and New Zealand Governments. In 2011 the Energy Rating website underwent a security audit and assessment. As a result, an appropriate web hosting arrangement was established in line with Australian Government Defence Signals Directorate risk assessment guidelines. When the Energy Rating website is upgraded to enable it to receive sales data, the website will undergo a further security audit and assessment to ensure the security arrangements are appropriate for the information that is being provided.

DCCEE operates a network that supports information classified to the Commonwealth Government classification of 'Protected'. The DCCEE applies technical and policy controls in maintaining the network that ensure that the information is secured appropriately to meet Commonwealth Government standards and the National Privacy Principles. Further information on the requirements that the DCCEE must meet in securely storing information can be found at the following links:

- www.privacy.gov.au for information on the Privacy Principles;
- [Protective Security Policy Framework](#) for information relating to the overarching security principles Australian Government Departments are bound by; and
- [Defence Signals Directorate Information Security Manual](#) for information relating to the standard which governs the security of Government Information and Communications Technology (ICT) systems.

5. Authorised disclosure of protected information

The Regulator can obtain a range of information that may be sensitive. This can include information such as test reports, sales data and other information relevant to individual companies under the Act. Commercially sensitive information obtained by the Regulator cannot be disclosed unless it is for an authorised reason under section 170 of the Act. It is important to note that this Policy does not restrict the authorised reasons under section 170 for disclosing protected information. Authorised disclosures under the Act are:

1. If the disclosure is made for the purpose of a person performing their duties or functions under or in relation to the Act, or to enable another person to perform their duties or functions or in relation to under the Act.
 - a. An example of this could be a compliance officer communicating relevant information to another officer within the same department, who needs the information to discharge their duties in making a decision about whether to register a model.
2. To assist a person to administer or enforce another law of the Commonwealth, a state/territory jurisdiction or a foreign jurisdiction that deals with products that use energy or impact on energy use. Disclosure under this clause is only permitted to administer or enforce energy efficiency laws similar to the GEMS Act – it does not permit the disclosure of protected information to government agencies for any other purpose, even enforcing other laws (although that may occur under other provisions discussed below).
 - a. The power is intended to facilitate sharing of information such as test reports for products, which increases the global knowledge base of product technical specifications and will encourage foreign agencies to reciprocate, reducing the need for duplicate testing. An example could be the Regulator sharing information with the New Zealand Energy Efficiency and Conservation Authority about a non-compliant model, so that the New Zealand Authority can determine if the model is available in its market and investigate compliance with applicable energy efficiency obligations.
3. To assist in the development of standards for products that use energy or impact on energy use, or the development of standards for testing these products.
 - a. This ability is important to align the E3 Program with international standards, and recognises that many products that are regulated by the program are available in a global market. Comparing the average efficiency of models sold in Australia with that of overseas markets will be relevant to consideration of harmonisation of standards.
4. The disclosure is specifically authorised by another law of the Commonwealth or a law of a state or territory that is prescribed in regulations to the GEMS Act.
5. If disclosure is approved by the person whose commercial interests may be affected by the release of the information.
6. If the information is already publicly available.
7. If the information disclosure is in the public interest or would prevent a threat to life or health.

- a. This can occur where the disclosure is certified in writing by the Minister to be in the public interest, or the disclosure is necessary to prevent or lessen a serious and imminent threat to life or health. For example if a harmful or dangerous substance was identified in a product, that information may be disclosed even though the disclosure may prejudice the commercial interests of those that are selling the product.
8. If it is a summary of, or statistics derived from, protected information, which is not likely to identify an individual company.
 - a. The power is intended to facilitate disclosure of aggregate information, for example to report on the number of products in Australia at various energy efficiency levels over time, to indicate trends in energy efficiency and inform the consideration of international product standards. The existence of publicly available sales data, such as that provided in Australia and around the world by the GFK Group and that published online by New Zealand, indicates that aggregated sales data can be developed and disclosed without identifying individual companies.

6. Disclosing information

The following guidelines apply when disclosing commercially sensitive information obtained under the Act. Disclosure of such information will be handled by:

- ensuring that any disclosure is authorised under section 170 of the Act; and
- aggregating information to a level at which it ceases to be commercially sensitive, if that is possible and is an appropriate way to respond to the need for disclosure; and
- ensuring that any disclosure is authorised in writing by the Minister, the Regulator or the Regulator's delegate; and
- ensuring appropriate conditions on any subsequent use are imposed when disclosing the information i.e. information will only be used for the purpose intended and will not be disclosed to another party unless required or permitted by law.

7. Summarising information

Section 170(1)(g) permits disclosure of protected information if it is summarised so that it is not likely to enable the identification of a person. This section of the Policy provides guidelines for aggregating information so that commercially sensitive information cannot be identified from that disclosure.

In the case of data that has been provided to the Regulator, a risk of identifying a person's sensitive information arises when the data is disaggregated. This risk can be mitigated by aggregating the information by product class, so that individual business and model information is concealed.

Therefore, data will be aggregated to the level of total product numbers that have been supplied, imported, exported or manufactured for Australia by efficiency level, where this is possible and appropriate for meeting the requirements for disclosure under section 170(1)(g). Aggregating the data in this way will mask any individual business information, while still providing valuable insights on efficiency trends within a particular product class.

The intention of the Regulator is to aggregate information to a level such that any niche markets or individual suppliers or models cannot be identified when summary information is disclosed, unless individual business data needs to be disclosed for an authorised reason other than under section 170(1)(g).

8. Further information

Any feedback or queries in relation to this *Information Handling Policy* or the E3 Program can be directed to energyrating@climatechange.gov.au or to the following postal address:

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GPO Box 854
Canberra ACT 2601
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For further information on the E3 Program, please visit www.energyrating.gov.au



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