

## **EXPLANATORY STATEMENT**

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 (Air Conditioners and Heat Pumps)  
Determination 2012*

### **Purpose**

The *Greenhouse and Energy Minimum Standards (Air Conditioners and Heat Pumps) Determination 2012* (**Determination**) establishes minimum energy efficiency, energy labelling and high efficiency level requirements, and associated requirements for conducting tests, for air conditioners and heat pumps.

The Determination is one of an initial suite of 19 determinations by which responsibility for the regulation of energy efficiency and energy labelling has been transitioned from the States and Territories to the Commonwealth.

### **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.

Under the previous state and territory legislative frameworks, 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. It was intended that the transition to Commonwealth regulation would, to the greatest extent possible, simply reproduce the regulatory requirements that existed under state and territory law. As a result, the practice of setting the requirements by reference to the relevant Australian or Australian/New Zealand Standards has been continued in this initial suite of determinations made under the Act, albeit with some departures in order to enshrine in the law various rulings made over time by state regulators, and certain administrative practices that had developed

over time in the COAG Equipment Energy Efficiency Program (**E3 Program**), to provide certainty to the regulated community.

Selected definitions and text are extracted in the GEMS Determinations 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 GEMS Determination without having to refer to the relevant standard.

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. For some products labelling requirements also relate to specific information that must be marked on the product itself or the box in which it is supplied.

Other regulatory requirements include requirements relating to high efficiency levels, product performance, and the impact of the product on the environment or the health of human beings:

- *High efficiency level* requirements allow suppliers or manufacturers to differentiate more efficient products in the market where the product does not carry an energy rating label, provided they meet a specified efficiency benchmark over and above the nominated GEMS level requirements.
- *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.
- Requirements in relation to the *impact of a product on the environment or the health of human beings* are intended to ensure that greater energy efficiency does not come at the expense of the environment or human health. An example of this is the setting of a maximum limit for the amount of mercury that may be contained in a compact fluorescent or linear fluorescent lamp. Some level of mercury is necessary for these energy efficient lamps to operate so limits are set to keep mercury content within safe levels for human health and the environment.

### **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 26 of the Act the GEMS labelling requirements specified in a GEMS determination may be:

- requirements relating to the information that must be communicated in connection with supplying or offering to supply products in the relevant product class;
- requirements relating to the manner in which that information must be communicated; 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 Australian businesses throughout the development of the Act. In the development of this Determination, Australian businesses were further consulted on ‘family of models’ circumstances in the Determinations (discussed below). Australian businesses were not consulted on the other provisions of this Determination (or the other Determinations in the initial suite of 19) as those provisions reproduce the requirements that existed under state and territory legislation.

Industry stakeholders representing all regulated product types were consulted in June and July 2012 on a proposed approach to the circumstances in which two or more models of products could be in a family of models. The aim of the consultation was to develop a streamlined and consistent approach to families of models across all product types. The consultation raised some general issues and some specific issues that are unique to particular product classes. It was decided that these issues could only be addressed with a detailed review of each of the family of models circumstances for each product type. A commitment was made to review the family of models treatment under GEMS for each product type over time. Lighting products have already been reviewed, and the results of the review were incorporated into the relevant determinations in the initial suite of 19. For products that have not had a review it was decided that the family of models treatment in previous state and territory regulation and practice would be carried over in the GEMS Determinations.

Extensive consultation was undertaken with state and territory government policy officers, state regulators, and technical consultants to ensure that the requirements established in the Determinations did not go beyond the scope of the previously existing state and territory requirements. The draft determinations were amended to reflect the outcome of the consultations.

## **Regulatory Impact**

A comprehensive COAG Regulatory Impact Statement (the GEMS RIS) was prepared as part of the process of developing the Act. The regulatory proposals encapsulated by the Determinations fall within the scope of the GEMS RIS, and only reproduce regulatory requirements for business that already existed under state and territory legislation. Consequently, no further regulatory impact analysis was considered necessary in relation to the regulatory proposal.

## **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 the day after it is registered on the Federal Register of Legislative Instruments. The default 12 month period that otherwise applies to the commencement of a GEMS determination, as provided for by paragraph 34(a) of the Act, is not necessary with respect to this Determination because it reproduces in Commonwealth law the energy efficiency and energy labelling requirements that previously existed in state and territory legislation.

### **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 by which the requirements of the Determination are specified;
- definitions of “ducted air conditioner” and “ducted heat pump”, which are given the same meaning as in Australian/New Zealand Standard AS/NZS 3823.1.2:2012;
- definitions of “non-ducted air conditioner” and “non-ducted heat pump”, which are given the same meaning as in Australian/New Zealand Standard AS/NZS 3823.1.1:2012;
- definitions of other related terms, which are given the same meaning as in Australian/New Zealand Standard AS/NZS 3823.2:2011;
- a definition of “CIE Standard”, which is a standard that is published by, or on behalf of, the International Commission on Illumination;
- a definition of “IEC Standard”, which is a standard published by, or on behalf of, the International Electrotechnical Commission; and
- a definition of “standard”, which means an Australian Standard, an Australian/New Zealand Standard, an IEC Standard or any other equivalent document.

### **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)

The standards referred to in the Determination themselves refer to other documents that must be applied to give effect to the Determination. The purpose of this subsection is to specify which version of such a document, if referred to in a standard under the heading “Referenced Documents” (or an equivalent heading), is the applicable version of the document for the purposes of the Determination.

Where a relevant document is defined in section 3 of this Determination and the definition specifies a date of effect, the applicable version of the document for the purposes of the Determination is the version that existed at that specified date. Otherwise, the applicable version of the document is the version that existed on the date this Determination comes into force.

In this Determination two standards have been defined in section 3 with a date other than the date the instrument came into force that has been specified – AS/NZS 3823.1.1:1998 with a specified date of 24 February 2006, and AS/NZS 3823.1.2:2001 with a specified date of 18 October 2010. Therefore, the applicable versions of these standards are the versions that existed on 24 February 2006 and 18 October 2001 respectively (the dates the most recent amendments to each standard was published). The standards were superseded by AS/NZS 3823.1.1:2012 and AS/NZS 3823.1.2:2012 respectively, which were published on 11 May 2012. The Determination allows registrants the option of using test methods set out in the superseded standards as alternatives to test methods in the current standards. It was not possible for the applicable version of these standards to be the versions that existed on the date the instrument came into force, as the standards had been superseded. For all other documents incorporated by reference in accordance with this subsection, the application version is the date this Determination comes 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 air conditioners and heat pumps of the vapour compression type with a rated cooling capacity of 65 kilowatts or less, in the product classes set out at subsection 5(2). This reflects the scope of the regulations for this product type under the previous state and territory legislation, as it was set out in the Australian/New Zealand Standard AS/NZS 3823.2:2011 (*Performance of electrical appliances – air conditioners and heat pumps. Part 2: Energy labelling and minimum energy performance standards (MEPS) requirements*).

### Subsection 5(2)

Subsection 5(2) specifies the product classes that are covered by the Determination. This subsection establishes 11 product classes for air conditioners and heat pumps covered by the Determination, based on the rated cooling capacity of the product, whether the product is ducted or non-ducted, whether the product is unitary or a split system, and if it has a water-cooled condenser or is a water-to-air or brine-to-air heat pump.

### Subsection 5(3)

This subsection sets out product classes that are not covered by the Determination. These are:

- close control air conditioners and liquid-chilling packages (these products are subject to requirements under other GEMS determinations);
- evaporative coolers or any other cooling systems that are not of the vapour compression type;
- ground-water-sourced heat pumps or ground-loop-sourced heat pumps;
- unbalanced air conditioners and spot coolers;
- air conditioners powered by mains electricity specifically designed and sold only for installation in end-use mobile applications of caravans, mobile homes, camper vans, boats and rail cars;
- products that deliver conditioned fresh outdoor air to an indoor conditioned space; and
- multi-split system air conditioners and heat pumps (that is, split systems with multiple indoor units).

This reflects the product classes excluded under the previous state and territory legislation. Some products not covered by this Determination may be covered by other GEMS determinations.

### Subsection 5(4)

This subsection defines the terms “brine-to-air heat pump”, “close-control air conditioner”, “ground loop sourced heat-pump”, “ground water sourced heat-pump”, “liquid-chilling package”, “multi-split system”, “solar-boosted air conditioner”, “spot cooler”, “unbalanced air conditioner”, “unitary air conditioner” and “water-to-air heat pump” for the purposes of section 5. These terms are given the same meaning as they have in the standards referenced in section 3. The terms are included here to assist in ascertaining whether a product is covered by this Determination without the need to refer to the relevant standard.

## **Section 6 – GEMS level requirements**

Section 6 specifies GEMS level requirements for energy use for air conditioners and heat pumps 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 the GEMS level requirements in relation to energy use are those set out in clause 3.2 of AS/NZS 3823.2:2011.

### Subsection 6(2)

This subsection specifies that the requirements for conducting tests are those set out in clauses 3.4 to 3.8 and 3.10 of AS/NZS 3823.2:2011.

### Subsection 6(3)

This subsection specifies, for the purposes of subsection 6(2), that:

- references to AS/NZS 3823.1.1 in AS/NZ 3823.2:2011 can be read as references to either AS/NZS 3823.1.1:1998 or AS/NZS 3823.1.1:2012; and
- references to AS/NZS 3823.1.2 in AS/NZ 3823.2:2011 can be read as references to either AS/NZS 3823.1.2:2001 or AS/NZS 3823.1.2:2012.

This has the effect that registrants have the option to use the relevant test method from either the current or the superseded test standard.

## **Section 7 – GEMS labelling requirements**

Section 7 specifies GEMS labelling requirements for air conditioners and heat pumps covered by the Determination, including requirements for conducting tests in order to demonstrate compliance with the energy labelling requirements, under section 26 of the Act.

### Subsection 7(1)

This subsection provides that the GEMS labelling requirements for non-ducted, single-phase air conditioners and heat pumps (single-phase products in product classes 1 to 5, and non-ducted, single-phase products in product classes 8 and 9) are those set out in section 2 of AS/NZS 3823.2:2011.

### Subsection 7(2)

This subsection specifies, subject to subsection 7(3), that air conditioners and heat pumps otherwise covered by subsection 7(1) are excluded from the requirements set out in that subsection if they are (a) designed for non-domestic applications, (b) not on display for sale through retail outlets, and (c) not promoted in any catalogue or advertising material that could be interpreted as suitable for some residential applications.

The intent of this subsection is to prevent air conditioners and heat pumps designed for commercial or industrial applications, but which otherwise fall within the range of products described in subsection 7(1), from being captured by the energy labelling requirements of subsection 7(1). Energy rating labels are generally not considered an

effective tool for influencing purchasing decisions where products are not sold through retail outlets.

### Subsection 7(3)

This subsection has the effect that if an air conditioner or heat pump otherwise excluded by subsection 7(2) displays an energy label, it must comply with the requirements set out in section 2 of AS/NZS 3823.2:2011.

### Subsection 7(4)

This subsection specifies that if a ducted, single phase air conditioner or heat pump (ducted, single-phase products in product classes 6 to 9), or a three-phase air conditioner or heat pump (three-phase products in product classes 1 to 9), displays an energy label, the GEMS labelling requirements are those set out in section 2 of AS/NZS 3823.2:2011.

### Subsection 7(5)

This subsection specifies that the requirements for conducting tests for are those set out in section 2, clauses 3.4 to 3.8 and 3.10 and section 4 of AS/NZS 3823.2:2011.

### Subsection 7(6)

This subsection specifies, for the purposes of subsection 7(5), that:

- references to AS/NZS 3823.1.1 in AS/NZ 3823.2:2011 can be read as references to either AS/NZS 3823.1.1:1998 or AS/NZS 3823.1.1:2012; and
- references to AS/NZS 3823.1.2 in AS/NZ 3823.2:2011 can be read as references to either AS/NZS 3823.1.2:2001 or AS/NZS 3823.1.2:2012.

This has the effect that registrants have the option to use the relevant test method from either the current or the superseded test standard.

## **Section 8 – Other GEMS requirements**

There are no other GEMS requirements for air conditioners and heat pumps covered by the Determination.

## **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.

This section specifies that the family of models circumstances for air conditioners and heat pumps in a single product class covered by this Determination are those set out in subclause 1.6.10 of AS/NZ 3823.2:2011.

## **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 air conditioners and heat pumps 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 (Air Conditioners and Heat Pumps) Determination 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 (Air Conditioners and Heat Pumps) Determination 2012* prescribes matters relating to minimum energy efficiency and energy labelling requirements for air conditioners and heat pumps under the *Greenhouse and Energy Minimum Standards Act 2012*. The Determination establishes requirements for energy use and energy labelling, 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 Mark Dreyfus QC MP**  
**Parliamentary Secretary for Climate Change and Energy Efficiency**