

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Environment and Energy

Greenhouse and Energy Minimum Standards Act 2012

*Greenhouse and Energy Minimum Standards (Gas Water Heaters) Determination
2017*

Purpose and Operation

The *Greenhouse and Energy Minimum Standards (Gas Water Heaters) Determination 2017* (the Determination) establishes minimum energy efficiency, energy labelling and product performance requirements, as well as associated requirements for conducting tests for gas water heaters.

This Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Gas Water Heaters) Determination 2013* (revoked Determination).

Background

The *Greenhouse and Energy Minimum Standards Act 2012* (Act) established a national framework for regulating the energy efficiency of products supplied or used within Australia, implementing the Council of Australian Governments' (COAG) commitment to establish national legislation to regulate energy efficiency and labelling standards for appliances and other products. The Act permits the Australian Government to set mandatory minimum efficiency requirements, to drive greater energy efficiency for products that are regulated. 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, costs, and greenhouse gas emissions. The national framework harmonises the regulation of equipment energy efficiency by replacing seven individual state and territory legislative frameworks.

Selected definitions and text are extracted in the Determination from the relevant 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. The standards referenced in the Determination are available to purchase from Standards Australia, through its exclusive licensee, SAI Global. The Australian Government envisages that the parties most likely to access the referenced documents are members of industry whose products are covered by the Determination. Those parties can readily purchase the standards online at the SAI Global website. If a member of the regulated community or the general public was interested in accessing the standards referenced in the Determination without purchasing them, they could access them at the National and State Libraries. National and State libraries in all jurisdictions are working to offer improved access to the standards for the community, including the ability to print onsite as well as download onsite or offsite with documents expiring after 5 days.

Additionally, the COAG Industry and Skills Council Standards Accessibility Working Group (ISCSA Working Group) is working to develop solutions to greater public access of standards beyond the availability in National and State libraries. The ISCSA Working Group is expected to report on its findings by 31 January 2018.

Minimum Energy Performance Standards (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. 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. It should be noted that energy rating labels are not required for gas water heaters.

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 thermal efficiency requirements are not achieved by reducing the effectiveness of the product in its primary function.

This Determination is a replacement determination. It makes a series of changes from the revoked Determination. The changes throughout the Determination relate to updating the specified testing requirements so it refers to new test standards published since the revoked Determination was made – namely AS/NZS 5263.0:2017 and AS/NZS 5263.1.2:2016. Updating these references allows suppliers of gas water heaters to test and register their products in accordance with the new standards for the purposes of the Act, which they are already required to do to meet product safety requirements under State and Territory gas safety legislation. These changes maintain the current MEPS level for gas water heaters.

Aside from the changes to take into account the updated standards for gas water heaters, there are also minor changes to the Product Class table at subsection 5(2) of the Determination so that it better reflects the original policy intent with regard to the products to be covered under each class. Many of the other components of this replacement Determination remain the same as in the revoked Determination, and so are reproduced in the same form in this Determination.

Authority

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.

Section 35 of the Act allows a Minister to make replacement determinations through revoking the previous determination and making a new determination to replace the revoked determination. The new determination can specify the new requirements and retain any relevant existing requirements from the revoked determination. The revoked determination ceases to be in force immediately before the replacement determination comes into force.

Under section 36 of the Act, a replacement determination must specify whether it affects the registration of models of GEMS products. Under subsection 36(2) of the Act, if a replacement determination does not specify that it affects a model's registration, the model is taken to be registered against the replacement determination. If a replacement determination specifies that it affects a model's registration, then under paragraph 48(2)(c) of the Act, the model's registration ceases to be in force from the time the replacement determination comes into force (or the beginning of the day a registration of the model against the replacement determination comes into force, whichever is the earlier).

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 Department of the Environment and Energy liaised with industry stakeholders and the New Zealand Energy Efficiency and Conservation Authority in regard to the proposed changes. The Department conducted targeted consultation with existing gas water heater registrants over a two week period in August 2017 by releasing an exposure draft of the Determination and inviting comment. This approach reflected the fact that the issue had arisen in the context of the product registration process, and was time sensitive as it was affecting the GEMS Regulator's ability to process registrations. A total of one submission was received by the closing date.

The only substantive concern raised in the submission received related to the Product Class table set out at subsection 5(2). The concern was that the products covered by the two product classes were slightly out of alignment with the original policy intent of reflecting the scope and exclusions set out in the Australian/New Zealand Standard AS/NZS 4552.2:2010. The amendments made in the Determination capture the comments that were raised in the submission and make minor amendments the wording in the Product Class table so that it better reflects the original policy intent.

Regulatory Impact

The regulatory proposals encapsulated by this Determination were managed outside of the regulatory impact statement process, with the approval of the Office of Best Practice Regulation. The approval was provided on the basis that the Determination makes no substantive changes to the requirements for regulated products or to the level of regulatory burden imposed.

Details of the Determination

Section 1 – Name of Determination

This section sets out the title of the Determination.

Section 2 – Commencement, Revocation and Replacement

This section provides that the Determination commences the day after it is registered.

It also provides that this Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Gas Water Heaters) Determination 2013*.

Section 3 – Definitions

This section sets out definitions for key terms used in the Determination. A new definition has been inserted for AS/NZS 5263.0:2017 and AS/NZS 5263.1.2:2016.

Section 4 – Interpretation

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

Subsection 4(1)

Subsection 4(1) sets out that if there are any inconsistencies between the Act, this Determination and the standards, the order in which priority should be taken in the interpretation of relevant provisions.

Subsection 4(2)

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(3)

The purpose of this subsection is to make clear that the applicable version of any relevant standard, or other relevant document that is referred to in a standard, is the version that is current on the date that this Determination came into force.

Section 5 – Specified product classes covered by this 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 water heaters that come within the product classes set out in subsection 5(2) and are fired with natural gas, liquefied petroleum gas or simulated natural gas and operate using natural draught, or fan assisted combustion systems. The product classes are the same as in the revoked Determination.

Subsection 5(2)

Subsection 5(2) sets out the two product classes that are covered by the Determination. This subsection has been amended to make it clear that it incorporates all of the exclusions provided for in clause 1.2 of AS/NZS 4552.2-2010.

Subsection 5(3)

Subsection 5(3) sets out that combination appliances, as defined in subsection 5(4) of the Determination, are not covered by the Determination.

Subsection 5(4)

This subsection sets out the definitions of terms that are used in this section. There have been changes to the definitions in subsection 5(4) to reflect the definitions in AS/NZS 5263.1:2016 and AS/NZS 5263.0:2017.

Section 6 – GEMS level requirements

Section 6 specifies GEMS level requirements for energy use and greenhouse gas production for gas water heaters 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 are those set out in clauses 2.1 of AS/NZS 4552.2:2010, but excludes the words “or AS/NZS 4452.3 (when published)” in relation to energy use and greenhouse gas production.

Subsection 6(2)

This subsection specifies that the requirements for conducting tests are the requirements mentioned in paragraph AA3.1 (Annual energy consumption) of Appendix AA of AS/NZS 5263.1.2:2016.

Section 7 – GEMS labelling requirements

Section 7 specifies that there are no GEMS labelling requirements for gas water heaters.

Section 8 – Other GEMS requirements

Section 8 specifies other GEMS requirements, in relation to both product performance and conducting tests for gas water heaters before it can be sold in Australia.

Subsection 8(1)

This subsection provides that the product performance requirements are the requirements set out in clause 5.13 of AS/NZS 5263.1.2:2016 relating to the minimum thermal efficiency requirement.

Subsection 8(2)

This subsection specifies the requirements for conducting tests on the thermal efficiency of gas water heaters. It sets out that products in product class 1 will need to comply with the requirements set out in paragraph ZC107 (Thermal Efficiency Test-Storage Water Heaters) of Appendix ZC of AS/NZS 5263.1.2:2016. Products in product class 2 will need to comply with the requirements set out in paragraph ZC107 (Thermal Efficiency, Water Heating Capacity, Start-up Heat Capacity and Electrical Power Consumption Test-Instantaneous Water Heaters and Circulators) of Appendix ZC of AS/NZS 5263.1.2:2016.

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 a gas water heater in product class 1 covered by this Determination may be in the same family of models. The effect of the specified circumstances at paragraph 9(1)(c) is to limit the physical differences that are allowed between models that may be registered in the same family of models.

Subsection 9(2)

This subsection specifies the circumstances in which two or more models of a gas water heater in product class 2 covered by this Determination may be in the same family of models. The effect of the specified circumstances specified circumstances at paragraph 9(2)(c) is to limit the physical differences that are allowed between models that may be registered in the same family of 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 gas water heaters covered by the Determination are category A products. This is unchanged from the revoked Determination.

Section 11 – Registrations affected by this Determination

Section 36 of the Act requires that a GEMS replacement determination must specify whether it affects the registration of: all models, specified models, or no models, of GEMS products that were covered by the revoked Determination.

This section provides that the registrations of models made under the revoked Determination are not affected. This means that a model registered under the revoked Determination is taken to be registered under this Determination from the date it commenced.

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 (Gas Water Heaters) Determination 2017

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 (Gas Water Heaters) Determination 2017* prescribes matters relating to minimum energy efficiency and energy labelling requirements for incandescent lamps under the *Greenhouse and Energy Minimum Standards Act 2012*. The Determination establishes requirements for energy use, energy labelling 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 Josh Frydenberg MP
Minister for the Environment and Energy**