

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Climate Change and Energy

Greenhouse and Energy Minimum Standards Act 2012

*Greenhouse and Energy Minimum Standards (Clothes Washing Machines)
Determination 2024*

1. Purpose and Operation

The *Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2024* (the Determination) sets minimum energy efficiency requirements, energy labelling requirements, product performance requirements, and associated requirements for conducting tests, of household clothes washing machines.

The Determination revokes and replaces the previous *Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2015* (old Determination).

Changes made in the Determination compared to the old Determination include:

- the Determination now references revised and updated standards which align with the updates introduced in the old Determination.
- program time is now displayed on the energy label (in minutes) for the program selected for energy labelling. This is to inform customers of the likely time to complete a washing cycle and will help consumers choose models with shorter program times if this is important to them.
- GEMS level requirements (also called minimum energy performance standards or MEPS) are being set for the first time for clothes washing machines. These set minimum efficiency requirements for each model sold. These requirements will not prohibit the supply of any clothes washers already registered for supply in Australia but will act as a safeguard against inefficient clothes washers being placed on the market in the future.
- updated test procedures referenced in the standards now define multi-compartment clothes washers and test voltage for single phase products.

The Determination continues to mandate a range of key performance requirements for clothes washers in addition to energy performance including soil removal (wash performance), water extraction (spin performance), severity of washing action (damage to clothes) and rinse performance. These are to ensure that products supplied to market are fit for purpose.

2. Background

The *Greenhouse and Energy Minimum Standards Act 2012* (the Act) established a national framework for regulating the energy efficiency of products supplied or used within Australia, replacing individual state and territory legislative frameworks. The

Act implemented the former 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 that are generally applied to drive energy efficiency improvements for regulated products. The Act also allows the Australian Government to set nationally-consistent labelling requirements, to increase Australian consumers' awareness of options to improve energy efficiency and reduce energy consumption, costs, and greenhouse gas emissions.

Minimum efficiency requirements are the minimum allowable energy efficiency of a product. These are referred in the Determination as greenhouse and energy minimum standards (GEMS) level requirements and are generally known as minimum energy performance standards (MEPS). The reason MEPS have been introduced for clothes washing machines is to enable the specification, and therefore enforcement, of wash and rinse performance requirements that are integral to energy labelling requirements and also ensure that clothes washing machines will meet consumers' wash and rinse performance expectations.

Other regulatory requirements possible under the Act include requirements relating to energy labelling, product performance, and the impact of the product on the environment or the health of human beings. Energy labelling and product performance requirements are set in the Determination.

Subsections 44(1) and 54(1) of the *Legislation Act 2003* (Legislation Act) provide that instruments are not subject to disallowance and sunseting where the enabling legislation facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States. The Act underpins and facilitates the operation of an intergovernmental scheme for product energy efficiency, giving effect to the Inter-governmental Agreement for the GEMS Legislative Scheme. Consequently the Determination is not subject to disallowance or sunseting. Further details are provided at Attachment B.

3. 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), and other requirements for a product class are established.

Section 35 of the Act allows the Minister to make replacement determinations through revoking the previous determination and making a new determination to replace the old Determination. The new determination can specify the new requirements and retain any relevant existing requirements from the old Determination. The old 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 that were covered by the old

Determination. Under subsection 36(2) of the Act, if the replacement determination specifies that it does not affect 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 by operating products in the 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 requirements specified above.

Under section 26 of the Act, the GEMS labelling requirements for a product class 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 rate them against the criteria specified in the information that must be communicated.

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) at a particular time;
- 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 of a kind specified in the regulations; and
- requirements for conducting tests in relation to products in the relevant product class in order to determine whether the products meet the requirements specified above.

4. Incorporated material and copyright

- The Determination references Australian/New Zealand test and performance standards. References to the Australian/New Zealand standards incorporated by reference are included in section 6 of the Determination and the standards can be purchased from Standards Australia Ltd. Commercial users who have ascertained that they are likely to be covered by the Determination (which is possible from reading the Determination in isolation) would be expected to purchase the referenced standards in order to comply with the Determination.
- The Australian/New Zealand standards can be purchased from Standards Australia at <https://store.standards.org.au> or the relevant distribution partners identified at <https://standards.org.au/access-standards/buy-standards>. The relevant distribution partners at the time the determination was made were Intertek Inform and Accuris.
- Non-commercial users can access standards incorporated in the Determination on a limited, no-fee basis through Standards Australia's on-line Reader Room facility. The Reader Room provides non-commercial access to Australian Standards for personal, domestic or household use.

5. Consultation

The Australian Government has worked with industry on the new requirements for electric household clothes washing machines since 2017. In early 2017, industry representatives led the development of the revised Australian/New Zealand standards referenced in the Determination. This work continued until 2021 when the revised Australian/New Zealand standards were published.

In 2019, the Australian Government consulted with all registrants of electric household clothes washing machines, industry representatives and other stakeholders concerning the introduction of low-level MEPS. No stakeholders raised objections to the introduction of MEPS and it was agreed that proposed MEPS would not affect the registration of any product registered under the Act.

In 2021, a draft Determination was developed in consultation with industry and other stakeholders. On 2 February 2022, an exposure draft of the Determination was released for public comment over a 4-week period. Three responses were received, seeking extension to the proposed 6 month commencement period in the determination. As a result of the comments received the commencement period was extended.

6. Regulatory Impact

The former Office of Best Practice Regulation (now the Office of Impact Analysis) advised a Regulation Impact Statement was not required for the Determination. Consequently, no further regulatory impact analysis was considered necessary in relation to the proposal.

7. Statement of Compatibility with Human Rights

In accordance with subsection 15J(2) of the Legislation Act, as the Determination is not a disallowable instrument, a statement of compatibility prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required.

Details of the Determination

Section 1 – Name

This section sets out the title of the Determination.

Section 2 – Commencement

This section provides that the Determination commences and comes into force on the day after the end of the period of 12 months beginning on the day the Determination is registered.

Section 3 – Authority

This section identifies the sections of the Act which authorise the Minister to make the Determination.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 – This instrument revokes and replaces the old determination

This section provides that the Determination revokes and replaces the old Determination.

Section 6 – Definitions

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

- definitions relating to the Australian/New Zealand standards by which the requirements of the Determination are specified. The applicable version of each standard referenced in the Determination is the version that existed on the day the Determination is made;
- a definition of Australian/New Zealand Standard;
- a definition of ‘clothes washing machine’, which is given the same meaning as in Australian/New Zealand standards AS/NZS 2040.1:2021 and AS/NZS 2040.2:2021; and
- a definition of ‘rated load capacity’ which is given the same meaning as in Australian/New Zealand Standard AS/NZS 2040.1:2021.

Section 7 – Specified product classes covered by this instrument

This section sets out the scope of the Determination.

Subsection 7(1)

This subsection provides that the Determination covers electric household clothes washing machines, whether they are used in a domestic or commercial context. This reflects the scope of the old Determination, and that of AS/NZS 2040.1:2021 and AS/NZS 2040.2:2021.

Subsection 7(2)

This subsection specifies that clothes washing machines covered by the Determination form a single product class.

Subsection 7(3)

This subsection sets out 3 classes of clothes washing machines are not covered by the Determination.

The first class are clothes washing machines with a capacity of 2 kilograms or less that cannot be connected to a mains water supply and do not have pumps or other means for extracting water.

The second class are clothes washing machines that are only capable of being used with cold water and satisfy all of the following conditions:

- no provision for internal water heating;
- a single water connection marked only for cold water;
- automatic fill control;
- no program that indicates (directly or indirectly) that a program other than a cold wash program is possible;
- a user manual that explicitly states it is only suitable for cold washing operations;
- no associated product literature that states it is suitable for anything other than cold washing operations.

The third class are clothes washing machines that have a rated load capacity of less than 1 kilogram irrespective of whether it is capable of performing warm washing operations.

The first two classes reflect the product classes excluded under the old Determination. The final class, which is clothes washing machines with a capacity of less than 1 kilogram, is a new class. This new class is excluded because there is no provision to test them under AS/NZS 2040.1:2021.

Section 8 – GEMS level requirements

Energy use and greenhouse gas production

Subsection 8(1)

This subsection specifies that GEMS level requirements (also known as MEPS levels) for energy use for clothes washing machines covered by the Determination under paragraphs 24(1)(a) and 25(a) of the Act are the requirements mentioned in subsection 8(2).

Subsection 8(2)

This subsection specifies GEMS level requirements in relation to energy use. This is a new requirement that has been included that allows the introduction of section 11 – Other GEMS requirements (i.e. soil removal, washing severity, water extraction and rinse performance requirements). These requirements are integral to performing energy tests for energy labelling requirements and also ensure that clothes washing machines will meet consumers' wash and rinse performance expectations.

Conducting tests

Subsection 8(3)

This subsection specifies requirements for conducting tests for products covered by the Determination under paragraphs 24(1)(a) and 25(b) of the Act. The requirements for conducting tests are those set out in section 2 of AS/NZS 2040.2:2021.

Section 9 – GEMS labelling requirements

Subsection 9(1)

This subsection states that section 9 specifies, for the purposes of paragraph 24(1)(b) of the Act, GEMS labelling requirements for products covered by the Determination.

Labelling and communication requirements

Subsection 9(2)

This subsection specifies GEMS labelling requirements for clothes washing machines covered by the Determination, in order to demonstrate compliance with the energy labelling requirements, under paragraph 24(1)(b) of the Act.

A clothes washing machine's energy rating label must meet the requirements mentioned in section 5 of AS/NZS 2040.2:2021.

Subsection 9(3)

This subsection requires that an energy rating label must accompany a product or its packaging covered by the Determination when it is supplied, or offered for supply, at a GEMS retail premises.

Conducting tests

Subsection 9(4)

This subsection specifies requirements for conducting labelling requirement tests for products covered by the Determination under paragraphs 24(1)(b) and 26(1)(c) of the Act.

The requirements for conducting tests are those mentioned in section 2 of AS/NZS 2040.2:2021.

Impact of replacement determination

Subsection 9(5)

This subsection provides a mechanism, in the event that the Determination is replaced in the future, to allow a transitional labelling provision to be specified in that replacement determination (the new determination) with the effect that complying with its requirements will be taken to be compliance with the labelling requirements of the Determination. This is to prevent the situation arising, in circumstances where a registrant chooses to register to the new determination between the time it is made and when it comes into force (as allowed by section 44 of the Act), of a product needing to comply with the labelling requirements of both determinations.

Section 10 – Transitional GEMS labelling requirements

This section provides that requirements of this section are made for the purpose of providing a transition to regulation of products in the product class under a GEMS determination (including because the products were not previously covered by a GEMS determination or because the GEMS determination is a replacement determination).

This section provides transitional arrangements with the effect that complying with the requirements of the old Determination will be taken to be compliance with the labelling requirements of the Determination. This is to prevent the situation arising, in circumstances where a registrant chooses to register to the Determination between the time it is made and when it comes into force (as allowed by section 44 of the Act), of a product needing to comply with the labelling requirements of both determinations.

Section 11 – Other GEMS requirements

Product performance

Subsection 11(1)

This subsection specifies other GEMS requirements for the purposes of subsection 24(2) and paragraph 27(1)(b) of the Act. It requires that products covered by the Determination meet the following performance requirements mentioned in section 3 of AS/NZS 2040.2:2021: soil removal; water extraction index; severity of washing action index; and rinse performance.

Conducting tests

Subsection 11(2)

This subsection specifies that the requirements for conducting product performance tests for the purposes of subsection 24(2) and paragraph 27(1)(e) of the Act are those mentioned in section 3 of AS/NZS 2040.2:2021.

Section 12 – Families 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 12(1)

This subsection specifies that two or more models are only in the same family if they have been declared to the GEMS Regulator as a family and they satisfy the requirements of this section.

Subsection 12(2)

This subsection specifies that for two or more models to be in the same family of models they must have the same energy performance and relevant physical characteristics, and rely on a single test report.

Section 13 – 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.

This section specifies that clothes washing machines covered by the Determination are category A products.

Section 14 – This instrument does not affect registrations under the old determination

Paragraph 36(1)(c) of the Act provides that if a replacement determination specifies that it does not affect a model's registration, the model is taken to be registered against the replacement determination.

This section specifies that the Determination does not affect the registration of any model registered against the old Determination. Consequently, all models registered under the old Determination are considered to be registered against the Determination.

Schedule 1 – Repeals

This Schedule repeals the old Determination.

Details of the exemptions from disallowance and sunseting in the *Legislation Act 2003*

Source of exemptions

Legislative instruments made under the *Greenhouse and Energy Minimum Standards Act 2012* (the GEMS Act) (excluding regulations) are exempt from disallowance under subsection 44(1) of the *Legislation Act 2003* (the Legislation Act), and from sunseting under subsection 54(1) of the Legislation Act.

Subsections 44(1) and 54(1) of the Legislation Act relevantly provide that instruments are not subject to disallowance and sunseting where the enabling legislation (not being the *Corporations Act 2001*) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States and Territories, and authorises the instrument to be made for the purposes of that scheme.

The GEMS Act creates a national framework for product energy efficiency in Australia (the GEMS Scheme) and underpins the Equipment Energy Efficiency (E3) Program. The E3 program is an initiative of the Australian, state, self-governing territory, and New Zealand Governments. The GEMS Scheme is an intergovernmental scheme, given that:

- it is governed by the Inter-governmental Agreement for the GEMS Legislative Scheme
- it is jointly funded, and
- key legislative instruments under the GEMS Scheme require consent from participating jurisdictions before they can be made or revoked (see sections 33 and 35 of the GEMS Act).

Legislative instruments made under the GEMS Act are made for the purposes of this intergovernmental scheme. Therefore, such legislative instruments are exempt from sunseting and disallowance.

Justification for exemptions

Through the E3 program, the Australian Government works with states and self-governing territories and the New Zealand Government:

- to identify appliances and other products which are appropriate for regulation
- to consult with industry stakeholders and agree requirements based on technical and product-specific considerations, and
- to set mandatory minimum energy efficiency requirements for these products, as well as consistent labelling and other requirements.

In this context, the exemptions from disallowance and sunseting have the effect that, where the intergovernmental scheme has agreed to introduce specific regulatory requirements (including with participating jurisdictions' consent to the key requirements of GEMS determinations), the Commonwealth Parliament cannot then override that agreement. The exemptions therefore promote confidence in the E3 program and encourage ongoing, cooperative participation from jurisdictions.

As well as implementing an intergovernmental scheme, these exemptions are justified on the bases that:

- instruments made under the GEMS Act:
 - are based on technical and scientific evidence about products' energy use and appropriate test standards, and
 - affect commercial certainty where manufacturers and importers need to adapt to new regulatory requirements, and
- the objects of the GEMS Act include to give effect to certain obligations that Australia has under particular international conventions.

In view of their detailed scientific and technical content, GEMS determinations and associated legislative instruments are confined in the matters that they deal with, and so do not deal with broad matters of policy or with politically contentious issues. The exemptions ensure that the Commonwealth Parliament cannot override the consideration given to these matters through expert and stakeholder consultation, and the collaborative E3 program.