

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources, Energy and Northern Australia

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2016

Purpose and Operation

The *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2016* (the Determination) establishes minimum energy efficiency, energy labelling and product performance requirements, as well as associated requirements for conducting tests, for incandescent lamps for general lighting services (incandescent lamps).

This Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2015* (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 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. The standards referenced in the Determination are available from Standards Australia and SAI Global.

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 (including those subject to this Determination) 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 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 lamp lifetime.

This Determination is a replacement determination. There are three substantive changes to this Determination. These changes relate to:

1. Removing the end date for the alternative initial efficacy requirement for mains voltage halogen (MVH) non-reflector lamps (product class 6) of 30 September 2016 from the revoked Determination. This means the five percent discount in MEPS for MVH non-reflector lamps will now be permanently adopted until a replacement determination phases out halogen lamps in the future.
2. The addition of tolerances for the values required to be marked on lamp packaging contained in subsection 7(1). The tolerances relate to light output in lumens, power in watts and the average lamp life.
3. A six month transitional period before the new marking requirements become mandatory.

Many of the other components of this replacement Determination, including the definitions and testing requirements, 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

In relation to the five percent reduced efficacy requirement for MVH non-reflector lamps, industry have indicated that should the 30 September 2016 expiry continue, there would be few or no halogen lamps available on the market. This is because there are a very limited number of halogen lamps for sale that meet the full MEPS requirements. Product testing carried out by the Australian Government supports this conclusion. On this basis, the Australian Government has decided to remove the expiry date of 30 September 2016.

The issues surrounding the packaging requirements have been raised by several stakeholders since late 2015 including incandescent lamp suppliers, retailers and Lighting Council Australia. This issue was also raised by a stakeholder participating in a consultation session on the Commercial Lighting and LED Product Profiles in September 2015.

An Incandescent Lamps Guidance Note was drafted in consultation with Lighting Council Australia and electrical safety regulators to clarify the GEMS Regulator's intentions and was released in December 2015. This Guidance Note was provided as an interim measure to allow sufficient time to develop a replacement determination to cover this issue.

A draft replacement determination was prepared in consultation with industry stakeholders. It was sent out to incandescent lamp registrants on 3 March 2016 seeking comment on the proposed changes. Comments were sought by 29 March 2016. No comments were received by the due date.

Regulatory Impact

The revoked Determination largely reflected the requirements set under previous state and territory legislation, prior to the Act coming into force, which had been the subject of a comprehensive COAG regulatory impact analysis process in 2008 and 2009. As the regulatory proposals encapsulated by this Determination make no changes to the substance of those requirements, no further regulatory impact analysis was considered necessary.

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 on 1 June 2016.

It also provides that this Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2015* (F2015L00303).

Section 3 – Definitions

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

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 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 incandescent lamps used in general lighting services, as defined in section 3, in the 7 product classes set out in the table. The product classes are the same as in the revoked Determination. The table provides information on the relevant characteristics that determine which products are covered by each of the 7 product classes, but some prospective registrants may need to refer to the relevant standards to determine which product class their product belongs to. Products that do not fall into one of the product classes are not covered by the Determination.

Subsection 5(2)

This subsection sets out product classes that are not covered by the Determination. These are automotive lamps, and certain special purpose lamps that are not intended for general purpose illumination and whose packaging is clearly marked to that effect. This reflects the product classes excluded in the revoked Determination.

Section 6 – GEMS level requirements

Section 6 specifies GEMS level requirements for energy use for incandescent lamps 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 specifies the GEMS level requirements for products in product classes 1 to 5 and product class 7. The initial efficacy requirement specified in this subsection is, apart from minor terminology changes, the same as that set out in clause 4.3 of AS 4934.2-2011.

Subsection 6(2)

This subsection specifies the GEMS level requirements for products in product class 6. The alternative initial efficacy requirement specified in this subsection no longer has the sunset date of 30 September 2016. Other than the removal of the date, the requirement is the same as the alternative initial efficacy requirement set out in clause 4.3 of AS 4934.2-2011.

Subsection 6(3)

This subsection specifies that the requirements for conducting tests for products in product classes 1 to 7 are those set out in section 2 of AS/NZS 4934.1:2014.

Section 7 – GEMS labelling requirements

Section 7 specifies GEMS labelling requirements for incandescent lamps covered by the Determination under section 26 of the Act.

Subsection 7(1)

This subsection specifies the GEMS labelling requirements for products in all product classes. These requirements concern the information that must be marked on the packaging of the product, in relation to light output, wattage and average lamp lifetime.

This subsection now allows for tolerances for the values required to be marked on all lamp packaging in order to allow for small variations in performance.

Subsection 7(2)

This subsection specifies that the requirements for conducting tests for products in all product classes are those set out in section 2 of AS/NZS 4934.1:2014.

Subsection 7(3)

This subsection specifies the transitional GEMS labelling requirements for products in all product classes. These requirements allow for products to display either the GEMS label as required in the revoked *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2015* (F2015L00303) or the labelling requirements as set out in subsection 7(1) and 7(2) for a period of six months from the commencement of the Determination. This is needed so that industry is not financially disadvantaged by having to immediately print new labels.

Subsection 7(4)

This subsection specifies that for products in product classes 1 to 7 to use the transitional labelling requirements, the product must have been registered under the revoked *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2015* (F2015L00303) and also meets the requirements of section 6 of the Determination. This is to ensure that the transitional requirements are not applied to products registered under the new Determination.

Section 8 – Other GEMS requirements

Section 8 specifies other GEMS requirements, in relation to product performance, for incandescent lamps covered by the Determination, including requirements for conducting tests in order to demonstrate compliance with these 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)

The table in subsection 8(1) specifies the product performance requirements for products in product classes 1 to 6 and product class 8. The requirements set out in the

table are, with minor terminology changes for greater clarity, the same as the lifetime and lumen maintenance requirements in clause 4.2 of AS 4934.2-2011.

Subsection 8(2)

This subsection provides that the product performance requirements for products in product class 7 are the requirements set out in table 1 of subsection 8(1), and the maximum wattage requirements set out in clause 4.4 of AS 4934.2-2011.

Subsection 8(3)

This subsection specifies that the requirements for conducting tests for products in all product classes are those set out in section 2 of AS/NZS 4934.1:2014.

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. The circumstances (described below) are the same as in the revoked Determination.

Subsection 9(1)

This subsection specifies the circumstances in which two or more models of incandescent lamps form a single product class covered by this Determination may be in the same family of models. This subsection operates, subject to subsection 9(2).

The specified circumstances are when the models (a) are of a single brand, (b) rely on the same test report, (c) have the same physical characteristics that are relevant to complying with the GEMS level requirements, the GEMS labelling requirements and the other GEMS requirements, and (d) have the same claimed energy performance characteristics that are relevant to complying with those requirements. The effect of these specified circumstances is to limit the physical differences that are allowed between models that may be registered in the same family of models.

An example of physical differences that might be allowed between two or more models with the same energy performance in order for them to be registered in the same family of models is different cap types (for example, bayonet cap or edison screw) or sizes.

Subsection 9(2)

This subsection specifies, for subsection (1), that a family may consist of no more than four 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 incandescent lamps 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 provides that 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.

This section specifies that the Determination does not affect the registration of any model registered against the revoked Determination, the *Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2015* (F2015L00303). Consequently, all models registered under the revoked Determination are considered to be registered against the Determination. Lamps registered under both the revoked Determination and the Determination must comply with the labelling requirements set out in Section 7 of the Determination.

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 (Incandescent Lamps for General Lighting Services) Determination 2016

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 (Incandescent Lamps for General Lighting Services) Determination 2016* 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 Resources, Energy and Northern Australia