

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Resources and Energy

Greenhouse and Energy Minimum Standards Act 2012

Greenhouse and Energy Minimum Standards (Television) Determination 2013 (No.2)

Purpose

The *Greenhouse and Energy Minimum Standards (Television) Determination 2013 (No.2)* (**Determination**) sets minimum energy use, energy labelling and product performance requirements, and associated requirements for conducting tests, for televisions. The Determination calls up the Tier 2 Minimum Energy Performance Standards (**MEPS**) and energy labelling requirements from the current Australian standard (AS/NZS 62087.2.2:2011) which was published on 26 October 2011. Tier 2 MEPS sets the mandatory comparative energy label to a minimum of four stars.

This Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Television) Determination 2013* (F2013L00630).

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 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.

Historically, 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. Over time the COAG Equipment Energy Efficiency Program (**E3 Program**) developed the practice of setting the requirements by reference to the relevant Australian or Australian/New Zealand Standards. This practice has been continued in this Determination.

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 GEMS Determination without having to refer to the relevant standard.

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.

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 soil removal for clothes washers.

Under the Act the Minister has limited powers to vary existing GEMS Determinations. For example section 35 of the Act prevents the Minister from varying an existing determination, by providing that section 33(3) of the *Acts Interpretation Act 1901* does not apply in relation to a GEMS determination.

In order for the Minister to revise any of the GEMS requirements specified in an existing determination, the Minister must first revoke the existing GEMS determination (see section 35 of the Act) and then make a replacement determination that specifies the new requirements and any relevant existing requirements from the revoked determination.

This Determination is a replacement determination, which amends the transitional GEMS labelling requirements in the revoked Determination so that a Tier 2 compliant product that was registered under the *Greenhouse and Energy Minimum Standards (Television) Determination 2012* (F2012L02115) may continue to display a Tier 1 label or may be re-labelled in accordance with the labelling requirements specified in subsections 7(1) and 7(2) of the replacement Determination. The other components of this replacement Determination, including the definitions and testing requirements, remain the same as in the *Greenhouse and Energy Minimum Standards (Television) Determination 2013* (F2013L00630) (the revoked Determination), and so are reproduced in the same form in this Determination.

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 35 of the Act, the Minister may revoke a GEMS determination and issue a replacement GEMS 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 Australian Government conducted extensive consultation with the television industry throughout the development of the regulatory approach to televisions. Consultation was undertaken through discussion papers, stakeholder forums, steering committee meetings and stakeholder meetings.

A discussion paper (and a subsequent supplementary discussion paper) was prepared by Digital CEnergy Australia, and released in the last quarter of 2007. The papers covered background information on television energy consumption, and technical information relevant to inform stakeholder comment on the introduction of Australian MEPS and energy rating labels for televisions.

Industry expressed concern about the stringency and timing of the implementation of the Tier 2 MEPS that were presented in the discussion papers and in the COAG Consultation Regulatory Impact Statement (**Consultation RIS**). In response to these concerns, it was agreed that a marketplace review would be conducted 12 months after the introduction of the Tier 1 MEPS. The review would assess whether the rate of television efficiency improvement was consistent with the modelling contained in the Consultation RIS. If the review did not confirm the expected efficiency improvements, it was agreed that the timeframe for the implementation of Tier 2 requirements would be extended.

The market place review, *Tracking the Efficiency of Televisions*, was finalised on 1 June 2011, and analysed the impact of a change in Tier 2 MEPS levels to 4 stars. The review confirmed the expected efficiency improvements contained in the Consultation RIS and the COAG Decision Regulatory Impact Statement (**Decision RIS**). As a result, the Office of Best Practice Regulation accepted the findings of this review, and agreed to the implementation of Tier 2 MEPS in the timeframe set out in the Decision RIS and that there was no need for any further regulatory impact analysis.

Regulatory Impact

A Decision RIS was prepared for televisions following the completion of the Consultation RIS process. The Decision RIS incorporated industry submissions and comments and reflected the modifications agreed to in consultation. The Decision RIS was finalised in May 2009 and presented to the Ministerial Council on Energy (**MCE**) for approval in late 2009. The MCE agreed to adopt the recommended regulatory approach presented in the Decision RIS in March 2010.

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 comes into force on the day after it is registered. This Determination revokes and replaces the *Greenhouse and Energy Minimum Standards (Television) Determination 2013* (F2013L00630).

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;
- a definition of “television”, which is given the meaning in AS/NZS 62087.1:2010;
- a definition of “IEC Standard”, which is a standard published by, or on behalf of, the International Electrotechnical Commission;
- a definition of “sold in modular form”, which means the display or monitor is sold with an accompanying external television tuner; 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)

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 the Determination

Section 5 sets out the scope of the Determination with respect to the class of products that it covers. Subsection 5(4), which appeared in the revoked Determination, has been removed from this Determination and the term ‘sold in modular form’ is now defined in Section 3 – Definitions.

Subsection 5(1)

This subsection provides that the Determination covers televisions, as defined in section 3, designed to be connected to 230 or 240 volt mains power by (a) a direct connection, (b) a power supply permanently connected to the television, or (c) an external power supply that can be disconnected from the television, can be operated without batteries, and is not specifically for charging batteries. 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 62087.2.2:2011 (*Power consumption of audio, video and related equipment - Minimum energy performance standards (MEPS) and energy rating label requirements for television sets*).

Subsection 5(2)

This subsection specifies the product classes that are covered by the Determination. This subsection specifies that televisions covered by the Determination form a single product class.

Subsection 5(3)

This subsection sets out product classes that are not covered by the Determination. These are televisions that do not have a tuner and are not sold in modular form, and front or rear projection televisions. This reflects the product classes excluded under the previous state and territory legislation.

Section 6 – GEMS level requirements

Section 6 specifies GEMS level requirements for energy use for televisions 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 5.2 of AS/NZS 62087.2.2:2011.

Subsection 6(2)

This subsection specifies that, subject to subsection 6(3), the requirements for conducting tests for are those set out in section 3 of AS/NZS 62087.2.2:2011.

Subsection 6(3)

This subsection specifies, for subsection 6(2), that for televisions that are powered by an external power supply that can be disconnected from the television, all energy measurements are to include the energy consumption of the external power supply. The subsection establishes requirements for doing so depending on whether or not an external power supply is supplied with the television. If the external power supply is supplied with the television, the television is to be tested with that external power supply. Otherwise, the television is to be tested with an external power supply of Energy Performance Mark III (as defined in AS/NZS 4665.1:2005).

Section 7 – GEMS labelling requirements

Section 7 specifies GEMS labelling requirements for televisions 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.

The transitional GEMS labelling requirements in the revoked Determination have been amended so that a Tier 2 compliant product that was registered under the *Greenhouse and Energy Minimum Standards (Television) Determination 2012* (F2012L02115) may continue to display a Tier 1 label or may be re-labelled in accordance with the labelling requirements specified in subsections 7(1) and 7(2) of the replacement Determination.

Subsection 7(1)

This subsection specifies the GEMS labelling requirements for Tier 2 MEPS and labelling as set out in AS/NZS 62087.2.2:2011. This requirement replaces the GEMS labelling requirements in the *Greenhouse and Energy Minimum Standards (Television) Determination 2012* (F2012L02115) (the revoked Determination) which were for Tier 1 MEPS and energy labelling in AS/NZS 62087.2.2:2011. The Tier 2 energy labelling requirements revise the algorithm used to calculate a product's star rating, reducing the number of stars that can be displayed on the label for a given level of energy use.

This subsection provides that the GEMS labelling requirements are those set out in section 4 (Energy label) of AS/NZS 62087.2.2:2011, but excluding:

- the sentence in clause 4.1 of AS/NZS 62087.2.2:2011—“In Australia, until 31 March 2013, and in New Zealand, when Tier 1 MEPS and Labelling requirements are incorporated by reference into legislation in New Zealand— $BEC = \text{base energy consumption calculated as } 127.75 + 0.1825 \times \text{Screen area (cm}^2\text{)}$ ”; and

- the words in clause B3 (a) (ii) of Appendix B of AS/NZS 62087.2.2:2011— “for products manufactured or imported before 1 October 2013”.

The sentence in clause 4.1 of AS/NZS 62087.2.2:2011 noted above is excluded because it relates to the formula for calculating base energy consumption under Tier 1 MEPS and energy labelling requirements. This Determination is only concerned with Tier 2 requirements, and therefore only the second formula for calculating base energy consumption in clause 4.1 is applicable.

The words in clause B3 (a) (ii) of Appendix B of AS/NZS 62087.2.2:2011 noted above are excluded because the commencement date for this Determination is 1 April 2013 (rather than 1 October 2013).

The label variant which is provided for in clause B3 (a) (ii) (the transitional label), which allows text indicating the product’s star rating on the previous scale, should not be confused with transitional GEMS labels in subsection 7(3). The *transitional label* is a label variant and will generally be used by suppliers who wish to show what the rating of their Tier 2 television would have been under the old Tier 1 rating calculation.

The transition label can be used instead of the Tier 2 base label for the whole time this Determination is in force.

Subsection 7(2)

This subsection specifies that the requirements for conducting tests are those set out in section 3 of AS/NZS 62087.2.2:2011.

Subsection 7(3)

This subsection specifies transitional GEMS labelling requirements for products that were imported into, or the product’s last process of manufacture is performed in, Australia before the commencement of this Determination. However, these products may continue to be sold in the market following the commencement of this Determination by complying with the requirements of subsection 16(2) of the Act, including that all “transitional GEMS labelling requirements” of the GEMS determination for the relevant product class are complied with in supplying or offering to supply the product. This subsection sets out the transitional GEMS labelling requirements.

From the commencement of the Determination, the transitional GEMS labelling requirements are either the labelling requirements specified in *Greenhouse and Energy Minimum Standards (Television) Determination 2012* (F2012L02115) or the labelling requirements specified in this Determination.

Subsection 7(4)

This subsection specifies that the transitional GEMS labelling requirements only apply to products that were registered under the *Greenhouse and Energy Minimum Standards (Television) Determination 2012* (F2012L02115) that meet the GEMS level requirements specified at section 6 of this Determination. The practical effect of

this is that the transitional GEMS labelling requirements only apply to Tier 2 compliant models registered under the under the *Greenhouse and Energy Minimum Standards (Television) Determination 2012*.

Section 8 – Other GEMS requirements

Section 8 specifies other GEMS requirements in relation to product performance for televisions covered by the Determination, including requirements for conducting tests in order to demonstrate compliance with performance requirements, under section 27 of the Act.

These product 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)

This subsection provides that the product performance requirements are those set out in clauses 2.1 to 2.5 of AS/NZS 62087.2.2:2011. The specific requirements specified are in relation to the following parameters:

- Recommended Home Viewing Picture Mode;
- User Selection of the Recommended Home Viewing Picture Mode;
- Implementation of Picture Set-up or Installation Menus;
- Picture Mode Luminance; and
- On Screen Warning When Set In 'Store' Mode.

Subsection 8(2)

This subsection specifies that the requirements for conducting tests are those set out in clause 2.4 (Picture Mode Luminance) of AS/NZS 62087.2.2:2011. The effect of this clause is that the test requirements only relate to the Picture Mode Luminance product performance requirement. A test method is not required to determine compliance with the other product performance requirements, as they are either present or not.

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 televisions covered by this Determination are those set out in clause 1.6 of AS/NZS 62087.2.2:2011.

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 televisions covered by the Determination are category A products.

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 (Television) Determination 2013*. Consequently, all models registered under the revoked determination are considered to be registered against the replacement 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 (Television) Determination 2013 (No.2)

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 (Television) Determination 2013 (No.2)* prescribes matters relating to minimum energy efficiency and energy labelling requirements for televisions 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 Gary Gray AO MP
Minister for Resources and Energy**