



Market Surveillance Results

July 2019 to June 2020

1. Purpose

This report presents the results of the market surveillance of models of the seven products regulated under the *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* that are required to display an Energy Rating Label (ERL) on the product when supplied in store. The report covers the period 1 July 2019 to 30 June 2020.

2. Background

Market surveillance refers to activities undertaken by GEMS inspectors to ensure models of GEMS products meet GEMS registration and labelling requirements once in the marketplace. It is focused on suppliers (including retailers and importers) and where applicable, manufacturers.

3. Market Surveillance

During this period GEMS inspectors attended the stores of 29 different national retail chains and franchises, and independent retail stores dealing in whitegoods and electrical products, across metropolitan and regional areas of Australia.

A total of 15,193 products of models of GEMS products were surveyed during inspections to ensure compliance with ERL requirements, with 1,715 - of these checked for registration compliance.

During 2019-20 factors such as Bush Fires and COVID-19 reduced the ability of compliance inspectors to safely carry out physical market surveillance in stores as planned. In line with the surge in e-commerce, GEMS Inspectors have increased Online Market Surveillance and it will continue to be a focus for the remainder of 2020 and beyond, alongside physical inspections.

4. Results

The following tables summarise the key results.

4.1 Approved Registrations in store

GEMS Product	Total number inspected	Number Approved	% Percentage Approved
Air Conditioners	98	91	92%
Clothes Dryers	90	89	98%
Clothes Washing Machines	192	189	98%
Computer Monitors	201	191	95%
Dishwashers	143	136	95%
Household Refrigerators/Freezers	439	421	95%
Televisions	552	552	100%
TOTAL	1715	1669	97%

4.2 Approved Registrations on line

GEMS Product	Total number products checked	Number approved	% Percentage Approved
Air Conditioners	50	40	80%
Clothes Dryers	50	48	96%
Clothes Washing Machines	78	78	100%
Dishwashers	61	61	100%
Household Refrigerators/Freezers	197	189	96%
Televisions	163	163	100%
TOTAL	599	579	97%

4.3 Correctly Labelled

In 2019-20 GEMS Compliance saw an overall compliance rate of 93% for labelling. Labelling compliance has improved significantly in recent years due to the significant amount of education and engagement work completed by inspectors as part of the market surveillance program.

4.4 Labelling Results

Issues with labelling identified this financial year included damaged labels, no labels, obscured labels and wrong labels on products.

GEMS Product	Correctly Labelled	Damaged Label	No Label	Obscured Label	Wrong Label
Air Conditioners ¹	486	5	43	5	12
Clothes Dryers	1105	8	3	7	0
Clothes Washing Machines	2582	6	12	10	0
Computer Monitors	481	1	112	18	7
Dishwashers	1454	15	25	21	4
Household Refrigerators/Freezers	4230	15	85	72	3
Television	3893	2	146	243	3
Total	14231	52	426	376	29

Notable observations that relate to the labelling results:

- ERLs were most commonly obscured by barcodes used during stocktake, promotional material from the manufacturer, handwritten codes on the ERL or store pricing information.

Energy Rating Labels must be securely attached, clearly visible, and not obscured in any way to comply with GEMS labelling requirements.

5. Enforcement Responses

¹ Due to a clarification on the interpretation of labelling of Air Conditioner dummy head units the level of no label non-compliance shown by the statistics may be elevated

At the conclusion of each market surveillance activity, GEMS inspectors discuss the nature and extent of any potential issues with the relevant manager and ensure immediate actions are taken to address any non-compliance. Following an assessment of the data collected during the market surveillance activity, GEMS inspectors may undertake further engagement with registrants and suppliers to ensure compliance with GEMS registration and labelling requirements.

Engagement, education and support will remain a key component of the GEMS Regulator's compliance framework; however, enforcement action, in accordance with the [GEMS Compliance Policy](#), may be taken where contraventions of the GEMS Act are found.

The maximum criminal or civil penalty a court may impose for each contravention of Section 16 of the GEMS Act is 60 penalty units for a Category A product and 120 penalty units for a Category B product. Assuming the relevant GEMS product is a Category A product, which is mostly the case, the maximum penalty therefore will be 60 x \$210 = \$12,600 per product. The amount of a penalty unit is regulated by section [4AA\(1\) of the Crimes Act 1914](#) and is currently set at \$210.

6. What you need to know

The following information may assist registrants and suppliers comply with the GEMS Act's registration and labelling requirements.

6.1 Registration Compliance

Under the GEMS Act, GEMS products can only be supplied or offered for supply, or used for a commercial purpose, if:

- the model of the product is registered under the GEMS Act against the relevant determination; and
- the product complies with the determination; and
- the supply, offer, or use complies with the determination.

A supply includes a supply by way of sale, exchange, gift, lease, loan, hire, or hire-purchase; while offer to supply includes make available, expose, display, or advertise the product for supply². Therefore, **all** persons in the supply chain, whether they be retailers, importers, or manufacturers have an obligation under the GEMS Act not to supply an unregistered model of a GEMS product. Manufacturers and importers are more likely to be responsible for initial supply of a model in Australia and therefore more likely to be the registrant. However, any person in the supply chain may be the registrant. Information about the registration process can be found [here](#).

How do I know if a model is registered?

To ensure models of GEMS products being supplied are registered as compliant with the relevant determination, suppliers can view the public [Registration Database](#). If suppliers are unsure a model is registered, they should ask their supplier for the 'Approval Certificate', also known as the 'Notice of Registration under the GEMS Act', or the GEMS registration number.

6.2 Labelling Compliance

Section 16 of the GEMS Act states that a person must not supply, or offer to supply, a GEMS product if 'a requirement of the GEMS determination is not complied with in supplying, or offering to supply, the product.' A

requirement to display an ERL, if applicable to that GEMS product, is covered by the relevant determination's GEMS labelling requirements.

Manufacturers and importers generally provide ERLs with each product supplied to retail stores. If an ERL is not provided, it is the retailer's responsibility to obtain one from the manufacturer or importer and attach it in accordance with the relevant determination, prior to offering the product for supply.

Similarly, if an ERL is removed, the retailer must obtain another from the manufacturer or importer and attach it prior to continuing to offer the product for supply.

7. Further Information

If you would like to contact the GEMS Regulator with information about suspected non-compliance or you would like further information, please contact us at compliance@gems.gov.au or visit energyrating.gov.au.