MARKET SURVEILLANCE RESULTS:

JULY 2017 to JUNE 2018

# Purpose

This report presents the results of 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 between 1 July 2017 and 30 June 2018.

# 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.

# Market Surveillance

During this period, GEMS inspectors attended the stores of 30 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 9,443 products were surveyed during inspections to ensure compliance with ERL requirements, with 4,338 of these checked for registration compliance.

Routine inspections by GEMS inspectors are normally completed in one of two formats:

* By exception – inspectors photograph and record all GEMS products with labelling non-compliance.
* Full inspection – inspectors photograph and record all GEMS products on display.

In addition, targeted inspections may focus on specific brands or models, retailers or suppliers or particular types of GEMS products, especially where there has been a history of, or trend towards, poor rates of compliance. Labelling requirements were a primary concern during this period.

# Results

The following tables summarise the key results.

## Approved Registrations

|  |  |  |  |
| --- | --- | --- | --- |
| **GEMS Product** | **Total number inspected** | **Number Approved** | **% Percentage Approved** |
| Air Conditioners | 318 | 309 | 97.2 |
| Clothes Dryers | 340 | 338 | 99.4 |
| Clothes Washers/Dryers[[1]](#footnote-1) | 36 | 35 | 97.2 |
| Clothes Washing Machines | 912 | 903 | 99.0 |
| Computer Monitors | 260 | 241 | 92.7 |
| Dishwashers | 513 | 502 | 97.8 |
| Household Refrigerators/Freezers | 1536 | 1499 | 97.6 |
| Televisions | 422 | 410 | 97.1 |
| **TOTAL** | **4337** | **4237** | **97.7** |

The 2017–18 year shows a slight increase overall in registration compliance, with the greatest improvement in computer monitors. Computer monitor compliance increased from 86.3 per cent to 92.7 per cent as a result of active enforcement action and engagement with suppliers.

Other notable improvements were in the rate of registration compliance for air conditioners (93 per cent in 2016–17) and household refrigerators/freezers (96.3 per cent in 2016–17). The remainder of the products maintained their high registration compliance rates from previous years.

## Unregistered

GEMS inspectors were unable to identify the registration status of 31 products due to the poor quality of photographs taken during store surveys.

A further 71 products did not hold ‘Approved’ registrations; 27 were expired registrations and 44 had never been registered.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **GEMS Product** | **Total number captured** | **Number Approved** | **Expired** | **Unable to Identify** | **Unregistered** |
| Air Conditioners | 318 | 309 | 5 | 4 | 0 |
| Clothes Dryers | 340 | 338 | 0 | 0 | 2 |
| Clothes Washers/Dryers | 36 | 35 | 0 | 0 | 1 |
| Clothes Washing Machines | 912 | 903 | 4 | 0 | 5 |
| Computer Monitors | 260 | 241 | 0 | 11 | 8 |
| Dishwashers | 513 | 502 | 5 | 5 | 1 |
| Household Refrigerators/Freezers | 1536 | 1499 | 13 | 3 | 21 |
| Televisions | 422 | 410 | 0 | 8 | 4 |
| **TOTAL** | **4338** | **4237** | **27** | **31** | **42** |

## Correctly Labelled

The result from market surveillance for 2017–18 showed an overall ERL compliance rate of 89 per cent. This is a significant improvement on 2016–17 which saw a compliance rate of only 77.3 per cent.

## Labelling Issues

Issues with labelling that were identified this financial year included damaged labels, incorrect or wrong labels, obscured labels, wrong labels on products and products without labels.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **GEMS Product** | **Damaged Label** | **Obscured Label** | **Wrong Label** | **No Label** |
| Air Conditioner | 1 | 3 | 3 | 95 |
| Clothes Dryers | 7 | 20 | 1 | 5 |
| Clothes Washers/Dryers | 0 | 2 | 0 | 2 |
| Clothes Washing Machines | 5 | 40 | 0 | 19 |
| Computer Monitors | 0 | 10 | 0 | 120 |
| Dishwashers | 17 | 29 | 1 | 54 |
| Household Refrigerators/Freezers | 10 | 141 | 36 | 68 |
| Televisions | 4 | 95 | 0 | 135 |
| **TOTAL** | **46** | **340** | **41** | **498** |

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.
* Four manufacturers were identified as having the wrong product designation on their ERLs. The products were Refrigerators/Freezers but the designation on the ERL was Refrigerator.

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

# Contributing Factors

GEMS inspectors use market surveillance activities as an opportunity to learn more about the industry and the factors inhibiting compliance with the GEMS Act. Discussions with retailers identified the following issues:

* many retailers are not aware they are also responsible under the GEMS Act and must not supply, nor offer to supply, ‘unregistered’ models of GEMS products
* ERLs must be attached to all products offered for supply, including display units or ‘fronts’ such as air conditioner ‘dummy’ head units
* ERLs are often removed by customers, for example while handling products like computer monitors or televisions
* store, promotional, pricing and other labels are given preference over the ERL if there is insufficient space to display all labels. This often results in the ERL being obscured.
* suppliers are reluctant to attach ERLs to ‘built in’ or ‘integrated’ products like dishwashers and refrigerators which are designed to blend in seamlessly with the overall fitout and cabinetry; affixing an ERL may detract from the aesthetics of the display
* returned or exchanged models are often put back on sale without obtaining a replacement ERL, for example, a customer may return a refrigerator unused due to it being the wrong size but has already removed all packaging including the ERL.[[2]](#footnote-2)

# Enforcement Responses

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](http://www.energyrating.gov.au/document/gems-compliance-policy-e3-program), 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](http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s4aa.html) and is currently set at $210.

# What you need to know

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

## 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 supply[[3]](#footnote-3). 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](http://www.energyrating.gov.au/suppliers/registration).

### 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](http://reg.energyrating.gov.au/comparator/product_types/). 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.

## 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.

# 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 [E3.Compliance@environment.gov.au](mailto:E3.Compliance@environment.gov.au) or visit [energyrating.gov.au](http://www.energyrating.gov.au/suppliers/compliance).

1. Combined clothes washers/dryers must hold a separate registration and display an ERL for each function (i.e. the clothes washer function must be registered and display the ERL, as must the dryer function. [↑](#footnote-ref-1)
2. In very limited circumstances, such models may be deemed ‘second-hand’; however, there are very specific conditions that must be met and generally speaking, if it is a straight swap (i.e. a customer has returned a fridge because it does not fit the space), then the product cannot meet the conditions for a ‘second-hand’ product. [↑](#footnote-ref-2)
3. Section 14 GEMS Act [↑](#footnote-ref-3)