**GEMS ACT COMPLIANCE:**

**MARKET SURVEILLANCE RESULTS - JULY 2016 to JUNE 2017**

**COMPLIANCE WITH REGISTRATION AND ENERGY RATING LABEL REQUIREMENTS**

1. **Purpose**

This report, covering the period between 1 July 2016 and 30 June 2017, presents the results of market surveillance of models of eight GEMS products required to display an Energy Rating Label (ERL) when supplied.

1. **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 - retailers, importers - and where applicable, manufacturers.

1. **The Market Surveillance**

During this period GEMS inspectors attended the stores of 34 different national retail chains and franchises and state-based local independent retail stores dealing in whitegoods, electrical and computer products, across the central business districts, suburbs, and regional areas of all states and territories of Australia. GEMS Inspectors also conducted online market surveillance to ensure models of GEMS products offered for supply, met GEMS registration requirements.[[1]](#footnote-1)

A total of 3,591 products of models were surveyed to ensure GEMS registration compliance. 3,367 of these were surveyed to ensure compliance with ERL requirements.

1. **The Results**

The following tables summarise the key results. Further tables are available at Attachment “A”.

* 1. **Approved Registrations**

Table - Approved Registrations

|  |  |  |  |
| --- | --- | --- | --- |
| **GEMS Product** | **Total number inspected** | **Number Approved** | **% Percentage Approved** |
| Clothes Washers/Dryers [[2]](#footnote-2) | 12 | 12 | 100.0 |
| Clothes Dryers  | 310 | 307 | 99.0 |
| Televisions  | 586 | 576 | 98.3 |
| Dishwashers  | 621 | 609 | 98.1 |
| Clothes Washing Machines  | 698 | 686 | 98.2 |
| Household Refrigerators/freezers  | 973 | 937 | 96.3 |
| Air Conditioners  | 230 | 214 | 93.0 |
| Computer Monitors | 161 | 139 | 86.3 |
| **TOTAL** | **3,591** | **3,480** | **96.9** |

Most products maintained the high registration compliance rates of previous years, however; the compliance rate of air conditioners dropped by 4.0%. Computer monitors improved marginally; though, at 86.3%, were noticeably lower than the other GEMS products.

* 1. **Unregistered**

Of the 111 products of models (3.1%) which did not hold ‘Approved’ registrations:

68 (1.9%) had never been registered

5 (0.1%) held ‘superseded’[[3]](#footnote-3) registrations

38 (1.1%) held ‘expired’[[4]](#footnote-4) registrations

The GEMS Regulator worked with registrants and suppliers to ensure unregistered models were registered, registrations were renewed, or the products of the model were removed from supply. The single entity responsible for 17 (25.0%) of the 68 unregistered products (77.2% of the 22 unregistered computer monitors) has returned to compliance. The GEMS Regulator is considering further enforcement responses.

* 1. **Correctly labelled**

This table shows the number and percentage of products correctly labelled: that is, labelled in accordance with the GEMS labelling requirements of the relevant determination:

Table - Correctly labelled

|  |  |  |  |
| --- | --- | --- | --- |
| **GEMS Product** | **Total products**  | **Number Correctly Labelled** | **% Correctly labelled** |
| Clothes Dryers | 347 | 325 |  93.7  |
| Household refrigerators/freezers | 944 | 827 |  87.6  |
| Clothes Washing Machines | 631 | 543 |  86.1  |
| Dishwashers | 484 | 402 |  83.1  |
| Clothes Washers/Dryers | 12 | 9 |  75.0  |
| Air Conditioners | 237 | 175 |  73.8  |
| Televisions | **548** | 261 |  47.6  |
| Computer Monitors | **164** | 61 |  37.2  |
| **TOTAL** | **3,367** | **2,603** | **77.3** |

All GEMS products, with the exception of computer monitors, fared poorly against the previous year’s results. Computer monitors improved slightly. Air conditioners, clothes washing machines and televisions suffered double digit declines, followed closely by dishwashers and household refrigerators/freezers. The results for television and computer monitors, with less than 50% of products labelled as required, were disappointing.

**4.4 Labelling Issues**

Products not labelled in accordance with GEMS labelling requirements included those with no ERLs, obscured ERLs, wrong ERLs (model number and information on the ERL did not match the actual product or the GEMS registration), and damaged ERLs (information on the ERL cannot be read). Some of these issues are discussed below:

 **4.4.1 No ERLs**

Table - No ERLs

|  |  |  |  |
| --- | --- | --- | --- |
| **GEMS Product** | **Total products**  | **Number with No ERL** | **% No ERL** |
| Computer Monitors | **164** | 99 | 60.4 |
| Televisions | **548** | 204 | 37.0 |
| Air Conditioners | 237 | 58 | 24.5 |
| Dishwashers | 484 | 51 | 10.5 |
| Clothes Washing Machines | 631 | 36 | 5.7 |
| Household refrigerators/freezers | 944 | 52 | 5.5 |
| Clothes Dryers | 347 | 9 | 2.6 |
| Clothes Washers/Dryers | 12 | 0 | 0.0 |
| **TOTAL** | **3,367** | **509** | **15.1** |

In what is an ongoing problem, retailers claimed the poor results for computer monitors and televisions related to the increasing size of the display or viewing areas and the decreasing size of the product’s frame, with suppliers reluctant to defile the viewing area of the product with an ERL. This is especially so for televisions where the non-compliance rate increased significantly over the last two years. Air conditioners, dishwashers and household refrigerators/freezers also experienced marked increases on the previous year’s results.

**4.4.2 Obscured ERLs**

An obscured ERL is one which is covered, either wholly or in part, by other information such as a store, promotional, pricing or other label[[5]](#footnote-5); or the ERL has been placed inside the product and is no longer visible to the consumer. The practice of obscuring ERLs continues:

Table - Obscured ERLs

|  |  |  |  |
| --- | --- | --- | --- |
| **GEMS Product** | **Total products**  | **Number Obscured ERLs** | **% Obscured ERLs** |
| Clothes Washers/Dryers | 12 | 3 | 25.0 |
| Televisions | **548** | 82 | 15.0 |
| Clothes Washing Machines | 631 | 46 | 7.3 |
| Household refrigerators/freezers | 944 | 57 | 6.0 |
| Dishwashers | 484 | 25 | 5.2 |
| Clothes Dryers | 347 | 9 | 2.6 |
| Computer Monitors | **164** | 4 | 2.4 |
| Air Conditioners | 237 | 2 | 0.8 |
| **TOTAL** | **3,367** | **228** | **6.8** |

Televisions experienced a notable decrease in the presence of obscured ERLs compared to the previous year’s market surveillance results whilst several other GEMS products experienced smaller decreases. However, several other GEMS products experienced mild increases. The GEMS Regulator would like to make it clear:

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

1. **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
* when offering to supply products, unopened and in their original packaging, an ERL must be affixed to or integrated onto, the packaging itself
* ERLs are often removed by customers, for example whilst 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.
* as mentioned in 4.4.1, the increasing size of the display/viewing area of televisions and computer monitors make it increasingly difficult to securely affix ERLs
* 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.[[6]](#footnote-6)

**6. 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 $180 = $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.

**7. What you need to Know….**

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

**7.1 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.

Section 17 of the GEMS Act states a person must not supply, or offer to supply, a GEMS product if the model of the product is not registered against the relevant GEMS determination. A supply includes a supply by way of sale, exchange, gift, lease, loan, hire, or hire‑purchase; whilst offer to supply includes make available, expose, display, or advertise the product for supply[[7]](#footnote-7). 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.

**7.1.1 Who is responsible for registration?**

Any person in the supply chain may be the registrant – manufacturer, importer, retailer, or other entity with an appropriate connection to the supply of the model in Australia. It is up to these persons to decide who the most appropriate registrant is. However, the GEMS Regulator recognises manufacturers and importers are more likely to be responsible for the initial supply of a model in Australia and therefore more likely to be the registrant. Information about the registration process can be found [here](http://www.energyrating.gov.au/suppliers/registration).

**7.1.2 How do I know if a model is registered?**

In order to ensure models of GEMS products supplied are registered and therefore registered as compliant with the relevant determination, suppliers can access the [Search the Registration Database](http://reg.energyrating.gov.au/comparator/product_types/) at energyrating.gov.au. 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.

**7.2 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.

The GEMS Regulator strongly encourages manufacturers and importers, as registrants, to assist retailers and others in their supply chain to comply with GEMS Act labelling requirements by, for example, providing additional ERLs with their products; or clearly identifying an appropriate contact to source additional ERLs as required. Whilst it is the retailer, as the supplier, who is directly affected by Section 16 of the GEMS Act, the absence of the ERL with its energy efficiency information may also reflect on the brand and model, ultimately influencing a consumer’s choice of product.

**8. Further Information**

If you would like to contact the GEMS Regulator with information about suspected non-compliance or you would like further information about anything noted here, please contact us at E3.Compliance@environment.gov.au or visit [energyrating.gov.au](http://www.energyrating.gov.au/suppliers/compliance).

Attachment “A”

***Table A. Registration status***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **GEMS Product** | **Approved** | **Expired** | **Superseded** | **Unregistered** | **Total** |
| Air conditioners | 214 | 13 |   | 3 | **230** |
| Clothes dryers | 307 | 3 |   | 0 | **310** |
| Clothes washing machines | 686 | 3 |   | 9 | **698** |
| Clothes washer/dryer | 12 | 0 |   | 0 | **12** |
| Computer monitors | 139 |   |   | 22 | **161** |
| Dishwashers | 609 | 6 |   | 6 | **621** |
| Household refrigerators/ freezers | 937 | 11 | 5 | 20 | **973** |
| Televisions | 576 | 2 |   | 8 | **586** |
| **Totals** | **3,480** | **38** | **5** | **68** | **3,591** |

***Table B. ERL status***

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **GEMS Product** | **Correctly labelled** | **No****label** | **Obscured label** | **Wrong label** | **Damaged label** | **Total** |
| Air conditioners | 175 | 58 | 2 |  | 2 | **237** |
| Clothes dryers | 325 | 9 | 9 | 1 | 3 | **347** |
| Clothes washing machines | 543 | 36 | 46 | 1 | 5 | **631** |
| Clothes Washer/Dryer | 9 | 0 | 3 | 0 | 0 | **12** |
| Computer monitors | 61 | 99 | 4 | 0 | 0 | **164** |
| Dishwashers | 402 | 51 | 25 | 0 | 6 | **484** |
| Household refrigerators/freezers | 827 | 52 | 57 | 0 | 8 | **944** |
| Televisions | 261 | 204 | 82 | 0 | 1 | **548** |
| **TOTAL:** | **2,603** | **509** | **228** | **2** | **25** | **3,367** |

1. There are no mandatory GEMS labelling requirements for products of models offered for supply online. [↑](#footnote-ref-1)
2. Combined clothes washers and dryers must each hold a separate registration and display an ERL for each function (i.e. the clothes washer must be registered and display the ERL as must the dryer. [↑](#footnote-ref-2)
3. Models held an ‘Approved’ registration but the GEMS requirements changed and the registration was not updated. [↑](#footnote-ref-3)
4. A model of a GEMS product holds an “Approved” registration for five years from the date on which the registration was approved, as long as it continues to meet the relevant determination’s requirements. At the end of this period, the model’s registration expires and it is considered “unregistered”. [↑](#footnote-ref-4)
5. The practice of obscuring ERLs with product barcodes has recently been observed. [↑](#footnote-ref-5)
6. In very limited circumstances, such models may be deemed ‘secondhand’ 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 met the conditions for a ‘secondhand’ product). [↑](#footnote-ref-6)
7. Section 14 GEMS Act [↑](#footnote-ref-7)