



## MARKET SURVEILLANCE RESULTS: JULY 2018 to JUNE 2019

### 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 between 1 July 2018 and 30 June 2019.

### 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 40 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 35,644 products of models of GEMS products were surveyed during inspections to ensure compliance with ERL requirements, with 8,499 of these checked for registration compliance.

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

- By exception – inspectors record all products of models of GEMS products with labelling non-compliance.
- Full inspection – inspectors record all products of models of 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.

### 4. Results

The following tables summarise the key results.

#### 4.1 Approved Registrations

GEMS Product	Total number inspected	Number Approved	% Percentage Approved
Air Conditioners	630	621	98.6
Clothes Dryers	545	531	97.4
Clothes Washers/Dryers <sup>1</sup>	64	63	98.4
Clothes Washing Machines	1243	1231	99.0
Computer Monitors	518	486	93.8
Dishwashers	839	827	98.6
Household Refrigerators/Freezers	2494	2408	96.6
Televisions	2166	2151	99.3
<b>TOTAL</b>	<b>8499</b>	<b>8319</b>	<b>97.9</b>

<sup>1</sup> 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).

The 2018/19 financial year showed a similar result in overall registration compliance compared with 2017/18. Continuing its recent trend, computer monitors improved from 92.7 per cent in 2017/18 to 93.8 per cent as a result of continued engagement with suppliers.

### 4.2 Correctly Labelled

In 2018/19 GEMS Compliance saw an overall compliance rate of 92.5 per cent for labelling. This is three and a half per cent higher than 2017/18. It is also worth mentioning that labelling compliance has improved significantly since 2016/17 when the compliance rate was 77.3 per cent. This is due to the significant amount of education and engagement work completed by inspectors as part of the market surveillance program.

### 4.3 Labelling Issues

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

GEMS Product	Correctly Labelled	Damaged Label	Obscured Label	Wrong Label	No Label
Air Conditioner <sup>2</sup>	1188	10	8	18	219
Clothes Dryers	2070	17	28	2	27
Clothes Washers/Dryers	188	0	1	0	2
Clothes Washing Machines	5869	19	35	3	35
Computer Monitors	1158	2	44	8	224
Dishwashers	3445	38	55	11	82
Household Refrigerators/Freezers	10887	89	226	9	205
Televisions	8165	29	706	19	503
<b>TOTAL</b>	<b>32970</b>	<b>204</b>	<b>1103</b>	<b>70</b>	<b>1297</b>

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. GEMS Compliance is working with retailer’s head offices to address the non-compliances and reinforce the requirements of the GEMS Act.

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

<sup>2</sup> 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.

## 5. Contributing Factors

GEMS inspectors also 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.<sup>3</sup>

## 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](#), 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.

## 7. What you need to know

The following information may assist registrants and suppliers 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

---

<sup>3</sup> 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.

- 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<sup>4</sup>. 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](#).

### 7.1.1 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.

## 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.

## 8. 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://energyrating.gov.au).

---

<sup>4</sup> Section 14 GEMS Act