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**Australian Government**

**GEMS Regulator**

# **Greenhouse and Energy Minimum Standards Compliance Policy**



**GREENHOUSE & ENERGY  
MINIMUM  
STANDARDS  
REGULATOR**

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## 1. Purpose

The Greenhouse and Energy Minimum Standards (GEMS) Compliance Policy outlines the principles adopted by the GEMS Regulator to maximise compliance with the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act).

## 2. GEMS ACT Requirements

Under the GEMS Act, a product that uses energy or affects the amount of energy used by another product and is in a product class covered by a GEMS determination, is known as a GEMS product. GEMS products can only be supplied or offered for supply, or used for commercial purposes, 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.

## 3. The GEMS Regulator

The GEMS Regulator, an office established by section 70 of the GEMS Act, is responsible for monitoring and enforcing compliance with the Act.

### 3.1 GEMS Inspectors

GEMS inspectors assist the GEMS Regulator to monitor and enforce compliance with the GEMS Act. The GEMS Act provides GEMS inspectors with inspection, monitoring, and investigation powers and notes that they may be assisted by others persons, known as person assisting GEMS inspectors, to exercise powers or perform functions under the Act.

## 4. Compliance Objective

The GEMS Regulator's compliance objective is to maximise the number of responsible parties (individuals or organisations having obligations under the GEMS Act and who may be held liable for a contravention) who choose to voluntarily comply with the GEMS Act, whilst implementing strategies and responses to identify, and then deter, non-compliance.

## 5. Compliance Approach

The GEMS Regulator is committed to:

- assisting responsible parties to understand the requirements of the GEMS Act
- monitoring responsible parties' compliance with the requirements
- actively pursuing those who opportunistically or deliberately contravene the GEMS Act.

## 6. Compliance Framework

The GEMS Regulator monitors and enforces compliance with the GEMS Act via a compliance framework that focuses on the following elements;

### 6.1 Engagement and Education

Engagement, education, and support, in the first instance, assist responsible parties to voluntarily comply with the requirements of the GEMS Act. As such, the GEMS Regulator and GEMS inspectors:

- engage responsible parties and help them understand the requirements of the GEMS Act
- attend and present at industry and consumer fora on compliance related issues
- publicise the GEMS Compliance Monitoring Program
- publicise the results and outcomes of GEMS compliance monitoring activities as permitted by the GEMS Act
- publicise offences, contraventions, and adverse decisions, as permitted by the GEMS Act.

Nonetheless, responsibility for complying with the requirements of the GEMS Act, including ensuring the accuracy of all information provided to the GEMS Regulator, rests with the responsible party.

### 6.2 Monitoring Compliance

Compliance monitoring activities assist the GEMS Regulator to determine a responsible party's compliance status. The GEMS Regulator monitors compliance via:

- check testing
- market surveillance
- receipt of allegations.

#### 6.2.1 Check Testing

Check testing refers to the activities undertaken to ensure that models of GEMS products meet the relevant GEMS determination's:

- GEMS level requirements relating to energy use and greenhouse gas production
  - specifically minimum energy performance standards (MEPS)
- GEMS labelling requirements
  - as they relate to energy efficiency claims
- GEMS other requirements
  - specified performance requirements.

Models of GEMS products are selected for check testing using an intelligence led, risk based approach; with the products sourced directly from the market and generally purchased anonymously. Check tests are conducted on behalf of the GEMS Regulator by National Association of Testing Authorities accredited or affiliated bodies either in Australia or overseas. Further information may be obtained from the [GEMS Check Testing Policy](#) and the [GEMS Check Testing Selection Criteria](#).

## 6.2.2 Market Surveillance

Market surveillance refers to the activities undertaken to ensure that models of GEMS products meet the GEMS registration and labelling requirements of the relevant GEMS determination once in the marketplace. It is conducted by GEMS inspectors and focused on retailers, suppliers, importers, and where applicable, manufacturers. Market surveillance is also conducted to ensure that models offered for supply online meet GEMS registration requirements.

## 6.2.3 Receipt of Allegations

The GEMS Regulator receives allegations of suspected non-compliance with the GEMS Act from a variety of sources. If you would like to contact the GEMS Regulator with information about suspected non-compliance, please contact us at [compliance@gems.gov.au](mailto:compliance@gems.gov.au)

## 6.3 Investigating Non-compliance

The GEMS Regulator assesses each instance of suspected non-compliance and, where appropriate, conducts an investigation to determine:

- whether it is an instance of non-compliance with the GEMS Act
- the circumstances relating to the non-compliance
- the responses that should be considered to address the non-compliance.

Assessments and investigations incorporate the views of relevant internal and external subject matter experts, and provide transparent and defensible conclusions and recommended response options for the appropriate delegate to consider and authorise.

## 6.4 Responding to Non-Compliance

The GEMS Act provides the GEMS Regulator with a range of response options including informal educative approaches, administrative and civil actions, and criminal sanctions.

GEMS Regulator responses include:

- suspending a registration
- cancelling a registration
- enforceable undertakings
- infringement notices
- civil penalty order
- injunctions

The GEMS Act allows the GEMS Regulator to publicise details of enforcement action taken, including the names of persons in relation to whom the action has been taken. In addition, certain adverse decisions relating to the registration of models of GEMS products may be publicised, including the names of the registrants.

## 6.4 Response Criteria

All GEMS Regulator responses will consider a responsible party’s history, behavior, motivation, and intention, and be proportionate to the risk posed by the non-compliance as demonstrated by the GEMS Compliance Continuum (below).

### Stakeholder Behaviours and Motivation

Voluntary compliance	Attempting compliance	Opportunistic non-compliance	Intentional non-compliance
<ul style="list-style-type: none"> <li>• Products registered.</li> <li>• Determination requirements met.</li> </ul>	<ul style="list-style-type: none"> <li>• Not yet compliant.</li> <li>• Willingly developing an understanding of requirements.</li> </ul>	<ul style="list-style-type: none"> <li>• Resistance to compliance.</li> <li>• No indication of intention to comply.</li> <li>• No indication of arrangements to ensure compliance.</li> </ul>	<ul style="list-style-type: none"> <li>• Deliberate non-compliance.</li> <li>• Criminal intent or fraud.</li> <li>• Other illegal activity.</li> </ul>



### GEMS Regulator Response

Help and support	Educate and provide feedback	Correct behaviour	Enforce the law
<ul style="list-style-type: none"> <li>• Provide information and opportunities to ask questions, discuss issues, and participate in a range of forums.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide additional guidance.</li> <li>• Where apparent non-compliance is identified, provide opportunity to respond.</li> <li>• Provide feedback on the adequacy of arrangements to ensure compliance.</li> </ul>	<ul style="list-style-type: none"> <li>• Enforcement responses according to the severity.</li> <li>• For example, issue infringement notices, suspend registration, seek undertakings</li> <li>• Consider publicising certain offences, contraventions, and adverse decisions.</li> </ul>	<ul style="list-style-type: none"> <li>• Use the full force of enforcement responses available.</li> <li>• Where appropriate, consider criminal prosecutions.</li> <li>• Refer to other agencies as required.</li> </ul>

Figure 1 - GEMS Compliance Continuum

## 7. Review

The GEMS Regulator will regularly review all policies, processes, and activities to ensure an intelligence led, risk based approach to GEMS Act compliance is achieved.

## 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 [compliance@gems.gov.au](mailto:compliance@gems.gov.au)

