

# **Administration of the Equipment Energy Efficiency Program (GEMS)**

Department of Climate Change, Energy, the Environment and Water

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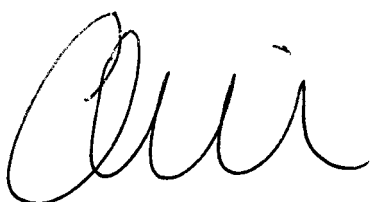
Canberra ACT  
17 June 2025

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Department of Climate Change, Energy, the Environment and Water. The report is titled *Administration of the Equipment Energy Efficiency Program (GEMS)*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Dr Caralee McLiesh PSM  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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For further information contact:  
**Australian National Audit Office**  
**GPO Box 707**  
**Canberra ACT 2601**

**Phone: (02) 6203 7300**  
**Email: [ag1@anao.gov.au](mailto:ag1@anao.gov.au)**

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### Audit team

Casey Mazarella  
Sung-Hoon Jun  
Lorcan Stevens  
Sky Lo  
Megan Cook  
Danielle Page  
Asher Perkins  
Yan Lan  
Jacqueline Hedditch

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# Audit snapshot

## Auditor-General Report No.43 2024–25

*Administration of the Equipment Energy Efficiency Program (GEMS)*



### Why did we do this audit?

- ▶ The Australian Government's National Energy Performance Strategy identified the regulation of appliance and equipment energy efficiency standards as 'one of the most effective mechanisms for decarbonisation and ensuring consumers benefit from energy performance improvements'.



### What did we find?

- ▶ The department's administration of the GEMS Act and its regulation of appliance and equipment energy efficiency standards is partly effective.
- ▶ The department's arrangements to support regulatory activities for the GEMS program are partly effective.
- ▶ The department's implementation of its regulatory approach is partly effective.



### Key facts

- ▶ The Equipment Energy Efficiency program is a joint initiative of the Australian, state and territory and the New Zealand governments. In Australia, it is underpinned by the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act).
- ▶ The purpose of the GEMS Act is to prevent the sale of the most energy inefficient products in the Australian market and to help inform Australian consumers about the energy efficiency of products when making decisions about which products to purchase.



### What did we recommend?

- ▶ The Auditor-General made nine recommendations to the Department of Climate Change, Energy, the Environment and Water.
- ▶ The department agreed to the nine recommendations.

27,268

products registered in Australia under the GEMS Act between 2019–20 and 2023–24.

87%

of the 8,379 registration applications processed between 6 December 2022 and 30 June 2024 were processed without appropriate delegations.

4

infringement notices issued by the GEMS Regulator. None were paid or enforced.

# Summary and recommendations

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## Background

1. The *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act) establishes the national framework for the regulation of appliance and equipment energy efficiency standards. The purpose of the program is to prevent the sale of the most energy inefficient products in the Australian market and to help inform Australian consumers about the energy efficiency of products when making decisions about which products to purchase. It aims to:

- reduce energy consumption, and associated greenhouse gas emissions and energy costs, of Australian households and businesses; and
- incentivise manufacturers to innovate and produce more energy efficient products.<sup>1</sup>

2. The GEMS Regulator, who sits within the Department of Climate Change, Energy, the Environment and Water (the department), is responsible for administering the GEMS Act.

## Rationale for undertaking the audit

3. In April 2024, the Australian Government published its National Energy Performance Strategy (the strategy), which aims to ‘drive a high energy performance economy and help consumers take control of their energy use and save on bills’.<sup>2</sup> The strategy identifies the regulation of appliance and equipment energy efficiency standards as ‘one of the most effective mechanisms for decarbonisation and ensuring consumers benefit from energy performance improvements’.<sup>3</sup>

4. This audit provides independent assurance to the Parliament regarding the effectiveness of the department’s administration of the GEMS Act and its regulation of appliance and equipment energy efficiency standards.

## Audit objective and criteria

5. The objective of the audit was to assess the effectiveness of the department’s regulation of appliance and equipment energy efficiency standards.

6. To form a conclusion against the objective, the following criteria were adopted:

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1 Australian Parliament, *Greenhouse and Energy Minimum Standards Bill 2012, Second Reading Speech*, House of Representatives, Wednesday 30 May 2012, The Hon Mark Dreyfus KC, MP, Parliamentary Secretary for Climate Change and Energy Efficiency, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F4a17e30d-c43b-48b9-83ed-4280fc00314c%2F0045%22> [accessed 11 November 2024].

*Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme*, September 2012, available from <https://www.energyrating.gov.au/industry-information/publications/inter-governmental-agreement-greenhouse-and-energy-minimum-standards-gems-legislative-scheme-original> [accessed 19 November 2024], pp. 4–5.

2 Minister for Climate Change and Energy, ‘First National Energy Performance Strategy ready to take pressure off energy bills’, media release, 5 April 2024, available from <https://minister.dcceew.gov.au/bowen/media-releases/first-national-energy-performance-strategy-ready-take-pressure-energy-bills> [accessed 3 July 2024].

3 Department of Climate Change, Energy, the Environment and Water, *National Energy Performance Strategy*, 2024, available from <https://www.dcceew.gov.au/sites/default/files/documents/national-energy-performance-strategy.pdf> [accessed 25 February 2025] p. 40.

- Have appropriate arrangements been established to support regulatory activities?
- Has the regulatory approach been effectively implemented?

7. The audit focused on the department's administration of the GEMS Act and its regulation of appliance and equipment energy efficiency standards. The audit did not examine the appropriateness of GEMS determinations or the accuracy of the data that was used to inform the determinations or the appropriateness of methodologies used to calculate estimated energy savings and emission reductions resulting from the scheme.

## Conclusion

8. The department's regulation of appliance and equipment energy efficiency standards is partly effective. The department has not effectively implemented a risk-based approach that is informed by data, evidence and intelligence. This limits the department's ability to effectively encourage compliance and deter non-compliance. The department is unable to demonstrate whether the GEMS program is achieving its intended purpose.

9. The arrangements to support regulatory activities for the GEMS program are partly effective. The GEMS program's records are incomplete, missing contextual information underpinning the records and may not be connected with related records. Staff supporting the program do not have direct access to GEMS records prior to 2020. Between 6 December 2022 and 30 June 2024, 87 per cent of registration applications were processed without appropriate delegations. The department was not managing risk for the GEMS program. Thirty-six per cent of GEMS staff in 2024, including the GEMS Regulator, did not make the required annual conflict of interest declaration. The department has established policies, procedures or guidance to outline how the GEMS Regulator's powers and functions should operate. The GEMS registration system operated without an authority to operate and did not have effective segregation of duties controls. The GEMS program is not fully recovering its costs. Fees have not been reviewed since 2016–17.

10. The department's implementation of its regulatory approach is partly effective. It uses the Energy Rating website to inform and engage with regulated entities. The department is undertaking compliance monitoring activities. The check testing conducted by the department is not informed by the department's assessment of compliance risk. There is a lack of direct access to records prior to 2020 and there are issues impacting the quality of data in the registers used to document compliance monitoring activities and investigations. This limits the quality and completeness of the department's records of its investigations of suspected non-compliance as well as its ability to effectively utilise the regulatory tools available under the GEMS Act. The GEMS Regulator has issued four infringement notices since the establishment of the program, all of which were not paid and were not enforced. The department is not measuring the program's impact on reducing energy consumption and carbon emissions and so cannot demonstrate whether the program is achieving its intended purpose.



## Supporting findings

### Arrangements to support regulatory activities

11. The administration of the GEMS program is overseen by intergovernmental and departmental bodies and structures. The GEMS program's records are 'fractured' and incomplete; staff supporting the program do not have direct access to GEMS records prior to 2020. Between 6 December 2022 and 30 June 2024, 87 per cent of registration applications were processed without appropriate delegations. The department was not managing risk for the GEMS program in accordance with its enterprise risk management framework. Thirty-six per cent of staff supporting the administration of the GEMS program in 2024, including the GEMS Regulator, did not make the required annual conflict of interest declaration in 2024. (See paragraphs 2.3 to 2.63)

12. The department has established policies, procedures or guidance documents to outline how the GEMS Regulator's powers and functions should operate. The GEMS Register includes fields to record 75 per cent of the information required by the GEMS Act. The GEMS registration system operated without an authority to operate until March 2025, when the system was granted authority to operate. The department had not established segregation of duties controls for the processing of applications to register a GEMS product. Between 2019–20 and 2023–24, there were 439 instances (1.5 per cent) where an application had been assessed and approved by the same individual and six instances (46 per cent) where an application was assessed and refused by the same individual. (See paragraphs 2.64 to 2.96)

13. The department has established a GEMS Compliance Policy that outlines the department's compliance objective. It has not established performance measures for the GEMS program's compliance objective. The department has documented a risk-based approach for its compliance monitoring activities and responses to non-compliance. The GEMS program is not fully recovering its costs. Between 2019–20 and 2023–24, the GEMS program recovered an average of 65 per cent of its costs each financial year. GEMS fees have not been reviewed since 2016–17. (See paragraphs 2.97 to 2.122)

### Implementation of regulatory approach

14. The department uses the Energy Rating website to provide information to and engage with regulated entities to encourage voluntary compliance. GEMS Inspectors may also provide educational materials regarding the GEMS labelling and registration requirements to suppliers when conducting inspections. Stakeholder satisfaction surveys indicate that stakeholders are satisfied that the department provides them with the support they need to understand and comply with their obligations. (See paragraphs 3.1 to 3.14)

15. The department is undertaking compliance monitoring activities (market surveillance, check testing and investigating allegations of non-compliance). The department's check testing records and reporting indicate that check testing activities have been decreasing. Forty-two per cent of GEMS Inspectors operating between 2019–20 and 2023–24 were fully compliant with the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector. The receipt of allegations of suspected non-compliance are not recorded in a central database. (See paragraphs 3.15 to 3.50)

16. The department has established selection criteria for the assessment of compliance risk for its compliance monitoring activities. In 2023–24 and 2024–25, the department’s assessment of compliance risk (to inform check testing) included products registered under less than half of GEMS determinations. The department is not using the assessment of compliance risk it has produced to inform its selection of models for check testing. Sixteen per cent of models check tested in 2023–24 were assessed as within the top 10 highest risk models for their product category. The majority (62 per cent) of models check tested had not been assessed for compliance risk. The ANAO was not able to determine whether the assessment of compliance risk was used to inform the selection of market surveillance activities, as 2024–25 was the department’s first year using its current approach. (See paragraphs 3.52 to 3.85)

17. The highest level of regulatory response issued or sought by the GEMS Regulator since the establishment of the program is an infringement notice. Four infringement notices have been issued, all of which were not paid and were not enforced by the GEMS Regulator. There is a risk that the GEMS Regulator may be seen as unable or unwilling to enforce the GEMS Act, which may limit the department’s ability to effectively encourage compliance and deter non-compliance. The department is not documenting the assessment of the detriment that non-compliance may have caused. The quality and completeness of the department’s records of its investigations of suspected non-compliance are limited by the lack of direct access to records prior to 2020 and issues impacting the quality of data in the department’s register of investigations. The department has established processes for the internal review of reviewable decisions. (See paragraphs 3.90 to 3.130)

18. The GEMS Act has been independently reviewed, as required under the GEMS Act. In 2023, the GEMS program was internally audited. The department conducts annual surveys to measure stakeholder satisfaction. The department prepares annual reports on the operation of the GEMS Act. Reporting on the program’s operation and performance could not be verified against departmental records. The department is not measuring and reporting on the program’s impact on reducing energy consumption and carbon emissions. (See paragraphs 3.131 to 3.157)

## Recommendations

### Recommendation no. 1 Paragraph 2.23

The Department of Climate Change, Energy, the Environment and Water ensure that the records related to the GEMS program are appropriately transferred to and stored in the department’s electronic document and records management system where they can be accessed by those responsible for administering the GEMS program.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 2**  
**Paragraph 2.75**

The Department of Climate Change, Energy, the Environment and Water review and update the GEMS Register to ensure that it documents all information that it is required to document under the GEMS Act.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 3**  
**Paragraph 2.91**

The Department of Climate Change, Energy, the Environment and Water review all instances where registration applications had been assessed and approved or refused by the same individual to ensure that the decisions were appropriate.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 4**  
**Paragraph 2.123**

The Department of Climate Change, Energy, the Environment and Water review and update the fees for the GEMS program to ensure that its costs are fully recovered in accordance with its charging arrangements.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 5**  
**Paragraph 3.32**

The Department of Climate Change, Energy, the Environment and Water review and improve its arrangements for recording and reporting on compliance monitoring activities to ensure that its records are complete and its reporting is accurate and verifiable.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 6**  
**Paragraph 3.42**

The Department of Climate Change, Energy, the Environment and Water ensure that GEMS Inspectors are compliant with the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 7**  
**Paragraph 3.86**

The Department of Climate Change, Energy, the Environment and Water review its assessment of compliance risk and its selection of check testing and market surveillance activities to ensure that compliance activities are focused on the areas where there is the greatest risk of non-compliance by ensuring that:

- (a) all regulated products (those covered by a GEMS determination) are considered as part of its assessment of compliance risk;

- (b) calculations of compliance risk are accurate; and
- (c) the assessment of compliance risk is used to inform the selection of compliance activities.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 8**  
**Paragraph 3.103**

The Department of Climate Change, Energy, the Environment and Water review and improve its arrangements for recording investigations into suspected non-compliance with the GEMS Act to ensure its records are complete, accessible and maintained in accordance with the Australian Government Investigations Standard.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

**Recommendation no. 9**  
**Paragraph 3.158**

The Department of Climate Change, Energy, the Environment and Water develop performance measure(s) that provide meaningful information on the effectiveness of the program in achieving its outcomes.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

## Summary of entity response

19. The proposed report was provided to the department. The department's summary response is reproduced below and the full response is at Appendix 1. Improvements observed by the ANAO during the course of this audit are listed at Appendix 2.

The Department of Climate Change, Energy, the Environment and Water (the department) is committed to effective regulation that achieves legislated outcomes, manages risks proportionately and promotes continuous improvement.

The department welcomes the Australian National Audit Office's audit report on the Administration of the Equipment Energy Efficiency Program (GEMS) and acknowledges the findings of the audit. The department agrees with all nine of the report's recommendations and can confirm that changes to strengthen the regulatory oversight of the GEMS Program are well underway.

The GEMS Program is estimated to have saved Australian households and businesses \$12–\$18 billion in avoided energy costs. In 2021–22 alone, it is estimated to have saved Australia between \$1.3 billion and \$2 billion in avoided energy costs while delivering greenhouse gas emissions savings of between 4.1 and 6.3 million tonnes<sup>4</sup>. The department is committed to ongoing improvement of the operation of the GEMS Program – in partnership with states, territories and

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4 Australian Government, Energy Rating, *GEMS Data Modelling Project 2022*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-data-modelling-project-2022> [accessed 14 May 2025].

New Zealand – to ensure it continues to deliver energy and cost savings and emissions abatement as an important part of Australia’s pathway to Net Zero.

## Key messages from this audit for all Australian Government entities

20. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Governance and risk management

- Regulators should assess the level of risk across the entire breadth of their regulation, and then target their monitoring and compliance activities at those areas with the highest level of risk.
- Where Parliament has legislated investigation and sanction powers for regulators, it is important that those powers be used where necessary to effectively deter non-compliance.
- Undertaking regulatory activities in full accordance with procedural and legislative requirements, including maintaining appropriate records, is necessary to ensure effective and defensible action can be taken in response to non-compliance.

### Performance and impact measurement

- Performance and evaluation frameworks should provide information on progress towards desired outcomes. Performance monitoring should include effectiveness measures to help provide assurance that regulatory activities are achieving their intent.
- Effective record keeping is especially critical to retain evidence of decision-making processes and ensure continuity in program administration through machinery of government changes and staff turnover that may lead to loss of corporate knowledge. Entities should ensure that records are transferred to and/or shared with receiving entities, when implementing machinery of government changes, in a timely and effective manner. Records should be complete, directly accessible and include relevant metadata.



# Audit findings

# 1. Background

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1.1 The Equipment Energy Efficiency program (E3 program) is a joint initiative of the Australian Government, state and territory governments and the New Zealand Government. It is enabled through intergovernmental agreements between Australia and New Zealand as well as intergovernmental agreements between the Australian Government and state and territory governments.

1.2 The E3 program is the multi-jurisdictional forum that enables collaboration on appliance energy efficiency matters for Australia and New Zealand. Representatives from both the Australian and New Zealand regulators participate in the E3 program.

1.3 In Australia, the E3 program is underpinned by the *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act). The purpose of the GEMS Act is to prevent the sale of the most energy inefficient products in the Australian market and to help inform Australian consumers about the energy efficiency of products when making decisions about which products to purchase.<sup>5</sup> The program aims to:

- reduce energy consumption, and associated greenhouse gas emissions and energy costs, of Australian households and businesses; and
- incentivise manufacturers to innovate and produce more energy efficient products.<sup>6</sup>

1.4 In 2024, the Australian Government's National Energy Performance Strategy stated that 'appliance labels and minimum standards in Australia is one of the most effective mechanisms for decarbonisation and ensuring consumers benefit from energy performance improvements'.<sup>7</sup> It also stated that:

Since 2012, the GEMS Act saved Australian households and businesses \$12–\$18 billion in avoided energy costs. In 2021–22 alone, it is estimated to have saved Australia between \$1.3 billion and \$2 billion in avoided energy costs while delivering greenhouse gas emissions savings of between 4.1 and 6.3 million tonnes – equivalent to around one-quarter of South Australia's annual emissions.<sup>8</sup>

## Legislation

1.5 The GEMS Act is supported by the following:

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5 Australian Parliament, *Greenhouse and Energy Minimum Standards Bill 2012, Second Reading Speech*, House of Representatives, Wednesday 30 May 2012, The Hon Mark Dreyfus KC, MP, Parliamentary Secretary for Climate Change and Energy Efficiency, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F4a17e30d-c43b-48b9-83ed-4280fc00314c%2F0045%22> [accessed 11 November 2024].

6 *ibid.*  
*Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme*, September 2012, pp. 4–5, available from <https://www.energyrating.gov.au/industry-information/publications/inter-governmental-agreement-greenhouse-and-energy-minimum-standards-gems-legislative-scheme-original> [accessed 19 November 2024].

7 Department of Climate Change, Energy, the Environment and Water, *National Energy Performance Strategy: Coordinated action to improve energy performance across the economy*, 2024, available from <https://www.dcceew.gov.au/sites/default/files/documents/national-energy-performance-strategy.pdf> [accessed 11 November 2024].

8 *ibid.*



- *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012*;
- *Greenhouse and Energy Minimum Standards Regulation 2012*;
- *Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2021*;
- *Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025*; and
- *Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services) Instrument 2019*.

1.6 The GEMS Act is also supported by the *Regulatory Powers (Standard Provisions) Act 2014*.

1.7 The GEMS Regulator is responsible for administering the GEMS Act.<sup>9</sup> As at March 2024, the GEMS Regulator is a position within the Department of Climate Change, Energy, the Environment and Water (the department). Prior to the establishment of the department in July 2022, the GEMS Regulator and responsibility for administering the GEMS Act was with the former Department of Industry, Science, Energy and Resources.

## Operation of the GEMS regulatory scheme

1.8 The GEMS Act provides for the establishment of GEMS determinations, which outline the energy efficiency requirements that regulated products must meet or exceed before they can be supplied or used for commercial purposes in Australia. GEMS determinations must specify either GEMS level requirements and/or GEMS labelling requirements.<sup>10</sup>

1.9 GEMS determinations are legislative instruments and are published on the Federal Register of Legislation. As at March 2025, there are 23 GEMS determinations in force. Table 1.1 lists these GEMS determinations and whether the determination includes GEMS level requirements, GEMS labelling requirements or both. Appendix 3 lists GEMS determinations that are in force as well as those that are no longer in force.

**Table 1.1: GEMS determinations currently in force**

GEMS determination	GEMS level requirements	GEMS labelling requirements
Air conditioners above 65kW (2022)	✓	✗
Air conditioners up to 65kW (2019)	✓	✓
Close control air conditioners (2012)	✓	✗
Clothes washing machines (2015) (2024) <sup>a</sup>	✓	✓
Commercial Ice-makers (2025) <sup>b</sup>	✓	✓
Computer monitors (2014)	✓	✓

<sup>9</sup> *Greenhouse and Energy Minimum Standards Act 2012*, section 71.

<sup>10</sup> *ibid.*, section 24.

GEMS determination	GEMS level requirements	GEMS labelling requirements
Computers (2013)	✓	✗
Dishwashers (2015) (2024) <sup>a</sup>	✓	✓
Double capped fluorescence lamps (2017)	✓	✗
Electric water heaters (2012)	✓	✗
External power supplies (2014)	✓	✓
Gas water heaters (2017)	✓	✗
Household refrigerating appliances (2019)	✓	✓
Incandescent lamps for general lighting services (2016) (2024) <sup>a</sup>	✓	✓
LED Lamps (2025) <sup>b</sup>	✓	✓
Liquid chilling packages using the vapour compression cycle (2012)	✓	✗
Power Transformers (2012)	✓	✓
Refrigerated cabinets (2024)	✓	✓
Rotary clothes dryers (2015) (2024) <sup>a</sup>	✓	✓
Self-ballasted compact fluorescent lamps for general lighting services (2017)	✓	✓
Swimming pool pumps (2021)	✓	✓
Television (2013)	✓	✓
Three phase cage induction motors (2019)	✓	✓

Key: ✓ Yes ✗ No.

Note: For determinations where there is a current and new GEMS determination listed, the table identifies whether there are GEMS level requirements and labelling requirements in the new determination.

Note a: The 2024 determinations will commence 12 months and one day after the determination was registered on the Federal Register of Legislation, at which time the previous determination will be revoked and replaced by the 2024 determination. Section 44 of the GEMS Act provides that, during this period, regulated entities may choose to apply to register against the determination currently in force or against the new determination that has not yet commenced.

Note b: The 2025 determinations will commence 12 months and one day after the determination was registered on the Federal Register of Legislation. The 2025 determinations are new determinations and do not revoke and replace previous determinations.

Source: Federal Register of Legislation.

## GEMS level requirements

1.10 GEMS level requirements, sometimes referred to as minimum energy performance standards (MEPS), are:

- requirements relating to one or more of the following:

- the amount of energy used by operating products in the regulated product class<sup>11</sup>;
- the amount of greenhouse gases resulting from operating products in the regulated product class; and/or
- the effect of those regulated products on the amount of energy used by operating other products<sup>12</sup>; and
- requirements for conducting tests in relation to products in the regulated product class, using the methods specified in the determination, in order to determine whether the products meet one or more of the requirements listed above.<sup>13</sup>

1.11 Regulated products must meet or exceed the GEMS level requirements in the relevant GEMS determination to be supplied or used commercially in Australia.<sup>14</sup> GEMS determinations outline the technical specifications of the GEMS level requirements and may refer to separately published Australian or international standards.<sup>15</sup>

### **GEMS labelling requirements**

1.12 GEMS labelling requirements, sometimes referred to as energy rating label requirements, are requirements:

- relating to the information that must be communicated in connection with supplying or offering to supply products in the regulated product class;
- relating to the manner in which that information must be communicated; and
- for conducting tests in relation to products in the regulated product class, using the methods specified in the determination, in order to rate them against criteria specified for the product class.<sup>16</sup>

1.13 The requirements for energy labelling differ depending on the regulated product. A common form of GEMS labelling requirements is the Energy Rating Label. Energy Rating Labels use a star rating to communicate how much energy a product uses compared to similar products. The more stars shown on an Energy Rating Label, the more efficient the product is when compared to other models of similar size and features.<sup>17</sup>

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11 GEMS determinations specify one or more classes of products (product classes) that the determination covers. It may specify a class of product in any way, including, but not limited to: the function the products perform; the materials from which the products are manufactured; the size or capacity of the products; whether the products contain a particular feature or are capable of operating in different modes; and the intended or expected end use of the products.

A single product may be in more than one product class. For example, a product that operates both as a washing machine and as a clothes dryer would need to comply with separate requirements for washing machines (where washing machines are a product class) and clothes dryers (where clothes dryers are a product class).

12 *Greenhouse and Energy Minimum Standards Act 2012*, section 25.

13 *ibid.*, section 25.

14 *ibid.*, sections 16 and 18.

15 *ibid.*, section 34A.

16 *ibid.*, section 26.

17 Australian Government, Energy Rating, *Understand the Energy Rating Label*, available from <https://www.energyrating.gov.au/consumer-information/understand-energy-rating-label> [accessed 19 November 2024].

1.14 Energy Rating Labels list the product's annual energy consumption, based on the usage listed below the figure (e.g. using the product a specific number of times per week).<sup>18</sup> The scale of the star rating may differ between product classes and some Energy Rating Labels include an additional row of stars, which indicates that the product is 'super' efficient. An example of an Energy Rating Label and super efficiency rating label is at Figure 1.1.

**Figure 1.1: Example of Energy Rating Labels, standard and super efficiency rating label**



Source: Australian Government, Energy Rating Website, *Understand the Energy Rating Label*, available from <https://www.energyrating.gov.au/consumer-information/understand-energy-rating-label> [accessed 19 November 2024].

1.15 Examples of other, non-energy rating, GEMS labelling requirements are:

- the requirements for 'Incandescent Lamps for General Lighting Services' to provide information about the light output in lumens<sup>19</sup>; the power in watts<sup>20</sup>; and the median lamp life on the packaging of the product; and
- the requirements for 'Self-ballasted Compact Fluorescent Lamps for General Lighting Services' to have the word 'mercury' to appear on the packaging of the product, accompanied by a declaration of the mercury content.

18 Australian Government, Energy Rating, *Understand the Energy Rating Label*, available from <https://www.energyrating.gov.au/consumer-information/understand-energy-rating-label> [accessed 19 November 2024].

19 A lumen is the measure of the total amount of visible light to the human eye from a light source.

20 A watt is the unit of power as a measure of the rate of energy transfer over a unit of time. One watt is equal to one joule per second.

## Funding for the program

1.16 The GEMS program is funded through the collection of fees<sup>21</sup> by the department. Table 1.2 lists the funding received by the program between 2019–20 and 2023–24.

**Table 1.2: Funding received by the GEMS program, 2019–20 to 2023–24, as reported in the department's<sup>a</sup> annual financial statements**

Financial year	Revenue (from charges) \$ m	Funding received by the program from appropriation <sup>b</sup> \$ m	Total revenue/funding for the program \$ m
2019–20	2.879	4.116	6.995
2020–21	4.039	4.323	8.362
2021–22	3.312	4.588	7.900
2022–23	3.073	3.143	6.216
2023–24	2.974	10.416	13.390

Note a: This table uses 'the department' to refer to the department(s) responsible for administering the GEMS Act at the time.

Note b: Funding received from annual appropriation. Both administered and departmental funding sources are included.

Source: ANAO analysis.

## Rationale for undertaking the audit

1.17 In April 2024, the Australian Government published its National Energy Performance Strategy (the strategy), which aims to 'drive a high energy performance economy and help consumers take control of their energy use and save on bills'.<sup>22</sup> The strategy identifies the regulation of appliance and equipment energy efficiency standards as 'one of the most effective mechanisms for decarbonisation and ensuring consumers benefit from energy performance improvements'.<sup>23</sup>

1.18 This audit provides independent assurance to the Parliament regarding the effectiveness of the department's administration of the GEMS Act and its regulation of appliance and equipment energy efficiency standards.

21 Section 77 of the GEMS Act provides for the GEMS Regulator to 'charge fees for services provided by, or on behalf of, the GEMS Regulator in the performance of the GEMS Regulator's functions'. Section 8 of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* provides for the GEMS Regulator to, 'by legislative instrument, specify fees (registration fees) for registration applications'. The cost recovery arrangements for the program are examined at paragraphs 2.106 to 2.122. Registration fees and fees for GEMS regulator services are listed at Appendix 4.

22 Minister for Climate Change and Energy, 'First National Energy Performance Strategy ready to take pressure off energy bills', *media release*, 5 April 2024, <https://minister.dcceew.gov.au/bowen/media-releases/first-national-energy-performance-strategy-ready-take-pressure-energy-bills> [accessed 3 July 2024].

23 Australian Government, Department of Climate Change, Energy, the Environment and Water, *National Energy Performance Strategy*, p. 40, available from <https://www.dcceew.gov.au/sites/default/files/documents/national-energy-performance-strategy.pdf> [accessed 25 February 2025].

## Audit approach

### Audit objective, criteria and scope

1.19 The objective of the audit was to assess the effectiveness of the department's regulation of appliance and equipment energy efficiency standards.

1.20 To form a conclusion against the objective, the following criteria were adopted.

- Have appropriate arrangements been established to support regulatory activities?
- Has the regulatory approach been effectively implemented?

1.21 The audit examined the department's administration of the GEMS Act and its regulation of appliance and equipment energy efficiency standards. The audit did not examine:

- the appropriateness of GEMS determinations or the accuracy of the data that was used to inform the determinations; or
- the appropriateness of methodologies used to calculate estimated energy savings and emission reductions resulting from the scheme.

### Audit methodology

1.22 The audit methodology included:

- review and analysis of relevant departmental records and data<sup>24</sup> including data held within and relating to the GEMS Registration system; and
- meetings with relevant department staff.

1.23 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$523,000.

1.24 The team members for this audit were Casey Mazzearella, Sung-Hoon Jun, Lorcan Stevens, Sky Lo, Megan Cook, Danielle Page, Asher Perkins, Yan Lan, and Jacqueline Hedditch.

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24 This includes records and data held by the department as well as departments that were previously responsible for administering the GEMS Act. This includes the former Department of Industry, Science, Energy and Resources (DISER) and the former Department of Energy and Environment (DEE).

## 2. Arrangements to support regulatory activities

### Areas examined

This chapter examines whether the Department of Climate Change, Energy, the Environment and Water (the department) has established appropriate arrangements to support regulatory activities for the Greenhouse and Energy Minimum Standards (GEMS) program.

### Conclusion

The arrangements to support regulatory activities for the GEMS program are partly effective. The GEMS program's records are incomplete, missing contextual information underpinning the records and may not be connected with related records. Staff supporting the program do not have direct access to GEMS records prior to 2020. Between 6 December 2022 and 30 June 2024, 87 per cent of registration applications were processed without appropriate delegations. The department was not managing risk for the GEMS program. Thirty-six per cent of GEMS staff in 2024, including the GEMS Regulator, did not make the required annual conflict of interest declaration. The department has established policies, procedures or guidance to outline how the GEMS Regulator's powers and functions should operate. The GEMS registration system operated without an authority to operate and did not have effective segregation of duties controls. The GEMS program is not fully recovering its costs. Fees have not been reviewed since 2016–17.

### Areas for improvement

The ANAO made four recommendations for the department to:

- ensure that records related to the GEMS program are accessible;
- ensure the GEMS Register documents all of the information that is required under the GEMS Act;
- review instances where registration applications had been assessed and approved or refused by the same individual; and
- review and update the fees for the GEMS program.

The ANAO identified one opportunity for improvement for the department to record the date that out of session meeting papers and documents were provided to members as well as recording the deliberations and decisions of out of session meetings in minutes.

2.1 Established governance arrangements, procedures, guidance and systems are important to ensure that regulatory powers and functions are exercised consistently and fairly, and in the service of achieving the regulatory scheme's intended outcomes. Effective risk management allows for threats and opportunities to be identified and evaluated and supports informed decision-making.<sup>25</sup>

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25 Department of Finance, *RMG 211: Implementing the Commonwealth Risk Management Policy* (RMG 211), available from <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/risk-internal-controls/implementing-commonwealth-risk-management-policy-rmg-211> [accessed 25 February 2025].



2.2 The Organisation for Economic Co-operation and Development (OECD) Best Practice Principles for Regulatory Policy states that ‘the governance arrangements of a regulator are critical’.<sup>26</sup> It explains that:

Regulators are entities authorised by statute to use legal tools to achieve policy objectives, imposing obligations or burdens through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement. ... it is the exercise of control through legal powers that makes the integrity of their decision-making processes, and thus their governance, very important.<sup>27</sup>

## Are appropriate governance arrangements in place?

The administration of the GEMS program is overseen by intergovernmental and departmental bodies and structures. The GEMS program’s records are ‘fractured’ and incomplete; staff supporting the program do not have direct access to GEMS records prior to 2020. Between 6 December 2022 and 30 June 2024, 87 per cent of registration applications were processed without appropriate delegations. The department was not managing risk for the GEMS program in accordance with its enterprise risk management framework. Thirty-six per cent of staff supporting the administration of the GEMS program in 2024, including the GEMS Regulator, did not make the required annual conflict of interest declaration in 2024.

2.3 Effective governance and oversight ensures that decision-makers have visibility and influence over the operation of a program. It also ensures that the regulator has visibility over the exercise of the regulator’s powers and functions.

### Oversight and administration of the program

2.4 The governance and oversight arrangements for the GEMS program are outlined in the Inter-governmental Agreement for the Greenhouse and Energy Minimum Standards Legislative Scheme (GEMS IGA)<sup>28</sup> and the Australia-New Zealand Policy Framework and Funding Arrangement for the Equipment Energy Efficiency Program (Australia-New Zealand Arrangement).<sup>29</sup>

2.5 The GEMS IGA is an agreement between the Australian Commonwealth, state and territory governments. The Australia-New Zealand Arrangement is an arrangement between the Commonwealth of Australia and the New Zealand Government.

2.6 The *Greenhouse and Energy Minimum Standards Act 2012* (GEMS Act) establishes the Greenhouse and Energy Minimum Standards Regulator (GEMS Regulator).<sup>30</sup> The GEMS Regulator, is responsible for administering the GEMS Act. Section 70 of the GEMS Act provides that the

26 OECD, *The Governance of Regulators*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, July 2014, p. 9, available from [https://www.oecd.org/en/publications/the-governance-of-regulators\\_9789264209015-en.html](https://www.oecd.org/en/publications/the-governance-of-regulators_9789264209015-en.html) [accessed 25 February 2025].

27 *ibid.*, p. 17.

28 Australian Government, Energy Rating, *Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme*, September 2012, pp. 5–7, available from <https://www.energyrating.gov.au/industry-information/publications/inter-governmental-agreement-greenhouse-and-energy-minimum-standards-gems-legislative-scheme-original> [accessed 19 November 2024].

29 New Zealand Government, New Zealand Treaties Online, *Australia-New Zealand Policy Framework and Funding Arrangement for the Equipment Energy Efficiency Program*, December 2016, available from <https://www.treaties.mfat.govt.nz/search/arrangement/691/0> [accessed 2 December 2024].

30 *Greenhouse and Energy Minimum Standards Act 2012*, section 70.



Secretary of the department designate, in writing, a position in the department as the position of the GEMS Regulator.<sup>31</sup> It states that the position of GEMS Regulator can only be occupied by an SES<sup>32</sup> employee or acting SES employee.

2.7 In January 2024, the position of Branch Head, Energy Security, Crisis Response and Greenhouse and Energy Minimum Standards Branch was designated as the GEMS Regulator. The designation instrument also lists other positions in the department that will be designated the GEMS Regulator, if the role is vacant.

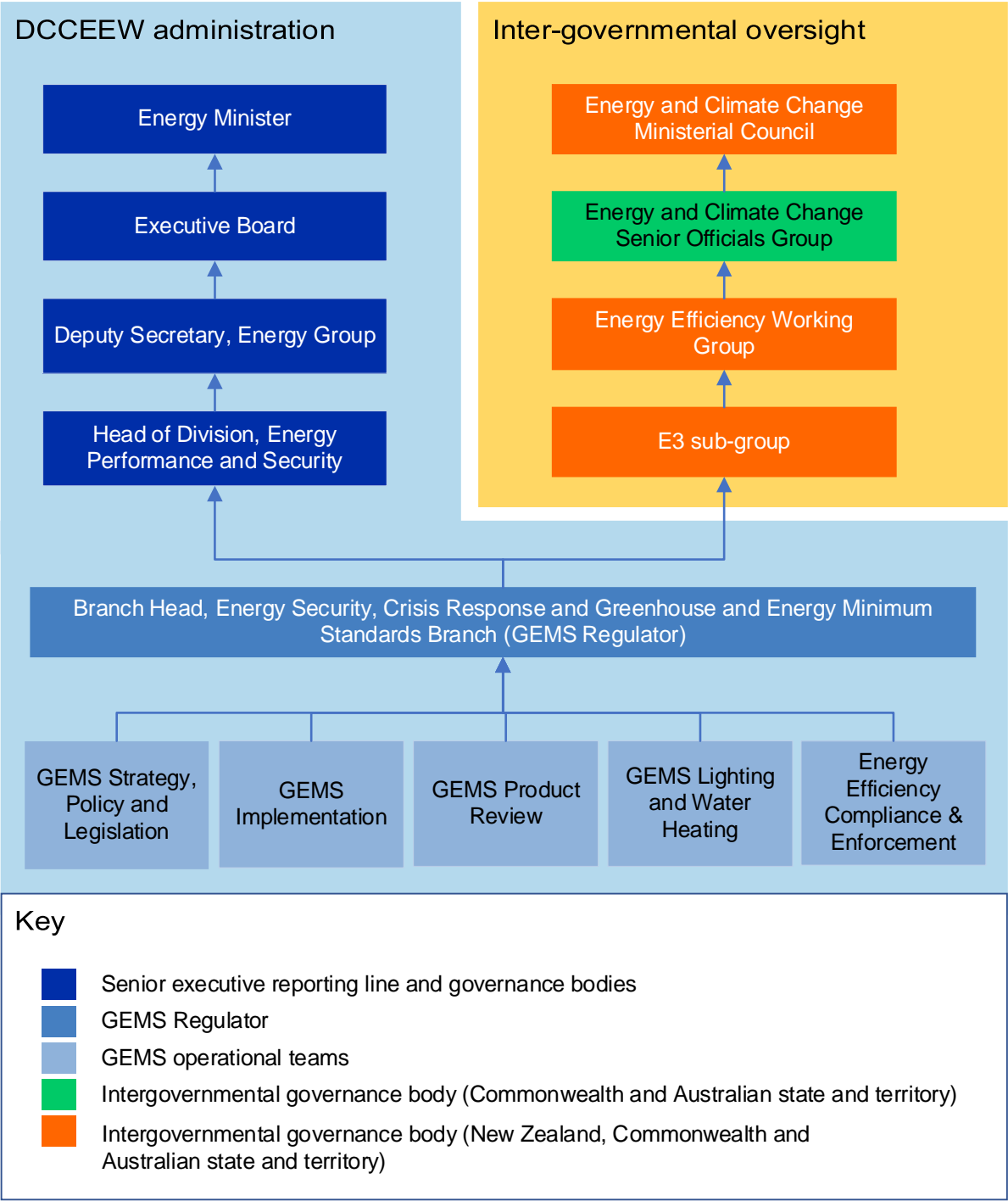
2.8 The intergovernmental oversight structures and departmental administrative oversight structures for the program are illustrated in Figure 2.1.

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31 Since July 2022, this is the Department of Climate Change, Energy, the Environment and Water. Prior to the establishment of the department in July 2022, the GEMS Regulator and responsibility for administering the GEMS Act was with the former Department of Industry, Science, Energy and Resources (DISER).

32 Senior Executive Service.

Figure 2.1: GEMS governance framework



Source: ANAO visualisation of governance arrangements.

### *Energy and Climate Change Ministerial Council*

2.9 The Energy and Climate Change Ministerial Council (ECMC) in its current form<sup>33</sup> has been in operation from February 2023 to present. ECMC membership comprises ministers responsible for climate change and energy from the Commonwealth (Chair); each Australian state and territory; and New Zealand.<sup>34</sup>

2.10 In August 2024, the department advised the ANAO that it does not have access to records for this governance body prior to June 2021. The ANAO examined meeting records for the period June 2021 to July 2024. Meeting records for this period were largely complete.

- The approval of minutes is not recorded.
- Out of session meetings comprised the majority of meetings (88 per cent). The date that out of session meeting papers and documents were provided to members and the deliberations and decisions of out of session meetings were not recorded in minutes.
- Of the 13 in-session meetings, five meetings (38 per cent) recorded discussion of matters related to GEMS or the E3 program.

### *Energy and Climate Change Senior Officials Group*

2.11 The Energy and Climate Change Senior Officials Group (ECSOG) has been in operation in its current form<sup>35</sup> from February 2023 to present. ECSOG membership comprises senior officials from the Commonwealth and each state and territory.

2.12 In October 2024, the department advised the ANAO that it does not have access to records for this governance body prior to May 2020. The ANAO examined meeting records from May 2020 to June 2024. Meeting records for this period were largely complete.

- The approval of minutes is not recorded.
- Of the 40 meetings, four meetings (10 per cent) recorded discussion of matters related to GEMS or the E3 program.
- The ECSOG has not established terms of reference. The department advised the ANAO that the ECSOG 'operates under the ECMC [terms of reference]'.
- The ECMC terms of reference note the existence of the ECSOG and its membership. It does not outline how the ECSOG will operate.

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33 This ministerial council has been known as the: Energy and Climate Change Ministerial Council (February 2023 to present); Energy Ministers' Meeting (June 2021 to December 2022); Energy National Cabinet Reform Committee (September 2020 to December 2020); and the Council of Australian Governments (COAG) Energy Council (December 2013 to May 2020).

34 New Zealand is a full member of the ECMC, for the purposes of the GEMS program, that abstains from voting on or participating in matters solely relating to Australia.

35 The governance body has been known as the: Energy and Climate Change Senior Officials Group (February 2023 to present); the Energy Senior Officials Meeting (approximately July 2020 to December 2022); and the COAG Energy Council Senior Committee of Officials (from between December 2013 and July 2015 until July 2020).

## Opportunity for improvement

2.13 Recording the date that out of session meeting papers and documents were provided to members as well as the deliberations and decisions of out of session meetings in minutes will improve the completeness of governance body records.

### *Energy Efficiency Working Group*

2.14 The Energy Efficiency Working Group (EEWG) has been in operation in its current form<sup>36</sup> from April 2023 to present. EEWG membership 'is formed from a government nominated representative from the Commonwealth and all states and territories'. New Zealand is also a member.

2.15 The ANAO examined meeting records from December 2021 to July 2024. Meeting records for this period were largely complete.

- Of the 14 in-session meetings, nine meetings (64 per cent) recorded the approval of minutes and 11 meetings (79 per cent) recorded discussion of matters related to GEMS or the E3 program.

### *E3 sub-group*

2.16 The E3-sub group has been in operation in its current form<sup>37</sup> from February 2022 to present. The E3 sub-group's membership 'consists of a representative from the Commonwealth, all states and territories and New Zealand'.

2.17 In October 2024, the department advised the ANAO that it was 'unable to find any records [for this governance body] prior to November 2020'. The department provided minutes for a meeting of this governance body dated 26 February 2020. The ANAO examined meeting records for the period from February 2020 to August 2024. Meeting records for this period were largely complete.

- Of the 14 meetings, 10 (71 per cent) recorded evidence of approval of minutes.
- Meetings discussed operational updates on matters relating to GEMS and E3 work.

2.18 In February 2025, the department updated the Energy Efficiency Secretariat: Energy Efficiency Working Group Standard Operating Procedures to require that meeting minutes for the EEWG and E3 sub-group include 'an ongoing register of [out of session (OOS)] papers circulated to relevant working group or sub-working group in the year to date. This will include the date OOS papers were circulated to members, along with the OOS decisions.'

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36 The working group has been known as the: Energy Efficiency Working Group (April 2023 to present) and the Energy Technology Working Group (December 2021 to December 2022).

37 The sub-group is named 'E3 steering committee' in the EEWG terms of reference. The sub-group's meeting records identify it as 'Equipment Energy Efficiency (E3)' from February 2022 to present. In February 2025, the department advised the ANAO that it has 'tended to use the name "E3 committee" and "E3 steering committee"' to refer to the sub-group. The governance body has also been known as the Energy Efficiency Advisory Team (April 2016 to August 2021). The department advised the ANAO that the E3 sub-group 'has existed in some form since 1992, details of which we cannot find prior to Nov 2020'.

## Access to records

2.19 The Department of Finance publishes a Machinery of Government<sup>38</sup> Changes Guide (MoG changes guide) to provide practical guidance to entities to support the implementation of MoG changes.<sup>39</sup> The MoG changes guide states that ‘Entities are to ensure that all types of information assets<sup>40</sup> pertaining to the business activities and functions are transferred to and/or shared with receiving entities.’<sup>41</sup> It explains that ‘As an established protocol, “records follow function”’.<sup>42</sup> The MoG changes guide also states that ‘A MoG change must be implemented in a timely and effective manner, ensuring continuity of Government business.’<sup>43</sup>

2.20 The staff supporting the GEMS program do not have direct access to GEMS records prior to 2020. In March 2025, the department advised the ANAO that machinery of government changes have ‘fractured’ and ‘[broken] the provenance’ of GEMS records.

- In July 2016, the GEMS program transferred records between departmental filing systems and discontinued the use of the program’s customer relationship management (CRM) system.
- In February 2020, the GEMS program transferred records between departmental filing systems during which it ‘was unable to retain metadata ... breaking the provenance of the record and fracturing it between systems’.
- In July 2022, the GEMS program transferred records between departmental filing systems which ‘resulted in [access to some records] becoming read-only and files being moved across without retaining filing structures, contributing to difficulties in record accessibility and further fracturing the record’.
- The department advised the ANAO that in ‘mid-2024’, changes to the department’s filing systems ‘led to broken links and impacted access ... creating further barriers to record discoverability and accessibility’.

2.21 There are no plans to transfer and store pre-2020 GEMS records on recordkeeping systems that the GEMS program can directly access.

2.22 The ‘fracturing’ of the GEMS program’s records has limited the department’s ability to effectively administer the GEMS program including to effectively investigate, respond to and

38 A machinery of government (MoG) change ‘follows a decision by the Cabinet or Prime Minister to abolish or create an entity, move functions or responsibilities between entities, or move functions into, or out of, the Australian Public Service (APS).’

39 Department of Finance, *Machinery of Government Changes Guide*, available from <https://www.finance.gov.au/government/machinery-government-changes-guide> [accessed 11 February 2025].

40 The MoG changes guide explains that the National Archives of Australia uses the term ‘information asset’ to refer to records, information and data collectively and ‘information management’ to refer to their collective management. In some entities, data and records are managed by different teams. For the purposes of a MoG change, all such information assets are subject to the *Archives Act 1983* and need to be considered as part of the MoG change implementation.

41 Department of Finance, *Machinery of Government Changes Guide*, Information Assets, available from <https://www.finance.gov.au/government/machinery-government-changes-guide/information-assets> [accessed 11 February 2025].

42 *ibid.*

43 Department of Finance, *Machinery of Government Changes Guide*, Executive Overview, available from <https://www.finance.gov.au/government/machinery-government-changes-guide/executive-overview> [accessed 11 February 2025].

enforce non-compliance (as outlined in paragraphs 3.90 to 3.127). There is a risk that, without complete and accessible records of its compliance and enforcement activities, the department will not be able to effectively investigate non-compliance or enforce the GEMS Act.

### Recommendation no. 1

2.23 The Department of Climate Change, Energy, the Environment and Water ensure that the records related to the GEMS program are appropriately transferred to and stored in the department's electronic document and records management system where they can be accessed by those responsible for administering the GEMS program.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

2.24 *The dispersed nature of GEMS information is due to the function having moved between multiple departments using different systems which were lacking interoperability, making data migrations during Machinery of Government Changes (MoG) extremely challenging.*

2.25 *The department is assessing recommendations for a primary Electronic Document and Records Management System (EDRMS) which will be used to consolidate records from the multiple systems where identified GEMS records currently reside.*

2.26 *In addition to developments in the technical management of EDRMS, the department is maturing its information policy and governance, which will better support the business process management of the GEMS Regulator.*

### Statements of expectations and intent

2.27 Resource Management Guide 128: Regulator Performance (RMG 128) outlines the purpose of Ministerial Statements of Expectations (SOE) and Regulator Statements of Intent (SOI):

Ministerial Statements of Expectations are issued by the responsible Minister to a regulator to provide greater clarity about government policies and objectives relevant to the regulator in line with its statutory objectives, and the priorities the Minister expects it to observe in conducting its operations.

...

A Regulator Statement of Intent responds to the expectations set out in a Ministerial Statement of Expectations. It outlines how the regulator intends to meet those expectations including how it will demonstrate progress. The Statement of Intent can be broader in scope than the expectations set out in the Statement of Expectations and offers an avenue to highlight any emerging risks or operational issues relevant to the delivery of the regulator's functions.<sup>44</sup>

2.28 RMG 128 states that Ministerial Statements of Expectations 'should be refreshed with every change in Minister, change in regulator leadership, change in Commonwealth policy or every two years.'<sup>45</sup>

<sup>44</sup> Department of Finance, *RMG 128: Guidance Note*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/guidance-note> [accessed 29 July 2024].

<sup>45</sup> *ibid.*

2.29 Between the establishment of the department (in July 2022) and December 2024, the department had not published a SOE or SOI. On 30 August 2024, the Minister issued the first Ministerial Statement of Expectations to the department's Climate Change and Energy regulatory schemes. On 3 December 2024, the department issued the Regulator Statement of Intent for Climate Change and Energy regulatory schemes. The SOE and SOI were published on the department's website in December 2024.

2.30 The SOE meets five (71 per cent); partly meets one (14 per cent); and does not meet one (14 per cent) of the seven 'should' statements outlined in RMG 128.<sup>46</sup> The SOE notes that the 'Australian Government's commitment to effective governance and performance of regulatory functions is guided by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)'. It does not request that the SOE be incorporated into PGPA Act processes such as the corporate plan and annual report.

2.31 The SOI meets all of the four (100 per cent) 'should' statements outlined in RMG 128.

## Delegations

2.32 Section 80 of the GEMS Act provides that the GEMS Regulator may, by writing, delegate one or more of the GEMS Regulator's powers or functions to an officer or employee of an agency of the Commonwealth, a State or a Territory (provided it is done with the agreement of the State or Territory).

2.33 There have been seventeen Delegation Instruments since the commencement of the GEMS Act in 2012, delegating powers to employees of Commonwealth departments and employees of Victoria, New South Wales, Queensland and South Australia state governments.

### *Applications processed without appropriate delegations*

2.34 In April 2019, the Commonwealth established an agreement with Energy Safe Victoria to 'process and approve or refuse registration applications under the [GEMS] Act' from April 2019 to March 2025. In December 2019, the GEMS Regulator established a delegation instrument that delegated functions and powers under sections 43, 45, 46, and 65 of the GEMS Act to employees of Energy Safe Victoria, with the agreement of the Victorian Minister for Energy, Environment and Climate Change. This included powers to:

- register a product model or to refuse to register a product model;
- impose conditions on a product model's registration;
- vary a product model's registration or to refuse to vary a product model's registration; and
- request further specified documentation or information from applicants by written notice and to require that documentation or information be verified by statutory declaration.

2.35 On 6 December 2022, the GEMS regulator established a delegation instrument which revoked 'all previous delegations made under [section 80 and subsections 88(7) and 130(4) of the GEMS Act]' and delegated functions and powers to Commonwealth employees.

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<sup>46</sup> Due to rounding, the total of the percentages does not equal 100.

2.36 This had the effect of revoking all delegation instruments that were in force at the time,<sup>47</sup> including the December 2019 Delegation Instrument delegating powers and functions to Energy Safe Victoria employees. The April 2019 agreement with Energy Safe Victoria to process registration applications continued operating, as it was scheduled to conclude in March 2025.

2.37 As a result of the revocation of the December 2019 Delegation Instrument in December 2022, employees of Energy Safe Victoria were exercising the functions and powers of the GEMS Regulator without the appropriate delegations between 6 December 2022 and 17 September 2024. During the period 6 December 2022 to 30 June 2024, employees of Energy Safe Victoria processed 7,327 registration applications (87 per cent of all registration applications processed during the period) under the GEMS Act without the appropriate delegations.

2.38 On 17 September 2024, the GEMS Regulator signed a delegation instrument delegating functions and powers under sections 43, 45, 46, and 65 of the GEMS Act to employees of Energy Safe Victoria, with the agreement of the Victorian Minister for Climate Action; Energy and Resources; and the State Electricity Commission.

2.39 In February 2025, the department advised the ANAO that it is 'seeking to rectify the defects in decisions (the affected decisions) made by Energy Safe Victoria (ESV) between 20 September 2022 and 17 September 2024 (the affected period)'. It explained that it will achieve this by taking the following remedial action:

- a. making a retrospective delegation instrument conferring authority on ESV employees during the affected period, and registering this as a notifiable instrument on the Federal Register of Legislation; and
- b. making a ratification instrument, to ratify the affected decisions. The Department will consider options for the publication of this instrument as part of the communications and stakeholder engagement strategy.

2.40 On 5 June 2025, the GEMS Regulator made a delegation instrument for the period 20 September 2022 to 17 September 2024 for 'the employees of Energy Safe Victoria who occupied or performed the duties of the positions specified therein during the delegation period', which was registered on the Federal Register of Legislation as a notifiable instrument.

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47 Delegation instruments also revoked in December 2022 included the:

- December 2012 Delegation Instrument delegating powers and functions to the New South Wales Department of Trade and Investment, Regional Infrastructure and Services;
- November 2012 Delegation Instrument delegating powers and functions to the South Australian Office of the Technical Regulator, Energy Markets and Programs Division, Department of Manufacturing, Innovation, Trade, Resources and Energy; and
- November 2015 Delegation Instrument delegating powers and functions to the Queensland Electrical Safety Office in the Office of Industrial Relations, Queensland Treasury.

The agreements with the New South Wales, South Australia and Queensland governments to process registration applications had concluded by September 2015 (for both New South Wales and South Australia) and March 2019 (for Queensland). As such, they were not impacted by the revocation of their delegation instruments.



## Risk management

2.41 The department's Corporate Plan 2024–25 states that 'Risk management is integrated into our governance arrangements, organisational planning and performance management'. It explains that:

Our governance committees, including the Risk Committee, play an important role in ensuring effective risk management including oversight and monitoring of risks and empowering risk owners to make risk-informed, evidence-based decisions.

The independent Audit and Risk Committee provides advice to the Secretary and senior executives on the appropriateness of the department's system of risk oversight and management.

2.42 The department has enterprise risk management policies and guidance, including:

- Enterprise Risk Management Framework (ERMF), dated September 2023;
- Enterprise Risk Reference Guide (Risk Reference Guide), dated August 2023;
- Internal Control Framework (ICF), dated March 2023; and
- Internal Control Reference Guide (Control Reference Guide), dated March 2023.

2.43 The ERMF 'outlines the department's approach to effective risk management' and the department's risk management practices. It states that 'Risk strategy involves establishing systems of risk oversight, management and internal control that are appropriate to our work'. The Risk Reference Guide explains that 'A risk strategy should clearly outline your business area's approach, expectations, prioritisation, and plan for managing risk in pursuit of your objectives'.

2.44 The ERMF states that 'Business areas **must** record their risks using a risk register'.<sup>48</sup> It states 'The Risk Register should inform the risk reporting' and that 'Risk reporting should focus on providing key information to support adequate risk oversight, and risk informed decision-making'.

2.45 In October 2024, the department advised the ANAO that it has not established a risk strategy or risk management arrangements that outline how risk is identified, assessed, recorded, monitored and reported for the Energy Group or the Energy Performance and Security Division, within which the GEMS program is administered, or for the GEMS program.

2.46 The department also advised the ANAO that it has not established a risk register for the Energy Group. The department provided a risk register for the Energy Performance and Security Division (division risk register) to the ANAO. The document is undated; however, metadata indicates that it was created in November 2021. The division risk register does not consider any risks specific to the GEMS program or its ability to achieve its outcomes.

2.47 In October 2024, the department advised the ANAO that there are no risk assessments, risk registers or risk management plans at the program level for the GEMS program. The department has conducted risk assessments for some elements of the program, including:

- a risk assessment of fraud risks in the GEMS Registration process, dated April 2023;
- Energy Efficiency Compliance & Enforcement Section Risk Assessments, dated April 2021 and June 2024;

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48 Emphasis in original quote.

- a risk assessment regarding the streamlining of the registration approach for Light Emitting Diodes (LED) lamps to reduce administrative burden on the lighting industry, dated December 2022; and
- an assessment of risks associated with the GEMS Check Testing tender process, undated.

2.48 In September 2024, the department reported the ‘top 3 risks’ for the program as part of a presentation to the Climate and Energy Project Board.<sup>49</sup> All three risks were rated ‘high’. The risks comprised:

- the GEMS program cannot be effectively administered;
- the GEMS program does not meet stakeholder expectations; and
- unable to regulate LED lamps (or other products) under GEMS due to stakeholder impact.

2.49 These risks had not been recorded or reported prior to or following the presentation. Governance body meeting records and internal program reporting documents do not include regular reporting on current or emerging risks or issues for the GEMS program. Monthly reports to the GEMS Regulator include priority ratings for work items, which could be considered a proxy for risk.

2.50 In April 2025, the department developed a risk strategy, risk management arrangements and a risk register for the GEMS program. The risk strategy outlines the program risks; identifies the Senior Responsible Officer (SRO) and risk and action owners; outlines the governance, reporting, escalation and decision-making arrangements; and lists the monitoring and review arrangements.

## **Integrity and probity**

2.51 The department has established policies and guidelines to manage integrity and probity, including a:

- Conflicts of Interest Policy, which outlines the process for departmental ‘employees and supervisors to fulfil their obligations concerning the identification, disclosure and management of conflicts of interest’; and
- Gifts and Benefits Policy, which outlines the ‘requirements for giving or receiving gifts and benefits in the course of official duties’.

2.52 The Conflicts of Interest Policy identifies the potential for undeclared and unmanaged conflicts of interest to expose the department to significant risks to the integrity of its regulatory functions. It provides examples illustrating integrity risks that staff members working in regulatory functions may face.

2.53 The Gifts and Benefits Policy states that officials ‘must not accept a gift or benefit where ... acceptance could, in any way, be construed as an attempt to influence administrative, regulatory or contractual decisions, or give rise to a conflict of interest.’

### ***Requirements for departmental staff***

2.54 The Conflicts of Interest Policy requires that employees ‘must make an annual declaration regarding any identified conflicts of interest’ and that ‘where employees do not identify a conflict

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49 The Climate and Energy Project Board provides oversight of project management across the Climate and Energy portfolios, with a primary focus of managing implementation risk for high priority projects currently in the delivery stage.

of interest, they must make a declaration stating they have not identified a conflict of interest'. Declarations are made through the department's Lighthouse system.<sup>50</sup>

2.55 In February 2025, the department advised the ANAO that 'The GEMS Regulator, in their capacity as the SES Band 1 Branch Manager of the Branch [that staff supporting the GEMS program sit within], receives conflict of interest declarations in Lighthouse for EL2 employees as their direct supervisor'. The department explained that 'If necessary to manage the Conflict of Interest, EL2s would raise the matter of the declaration with their supervisor.'

2.56 The ANAO examined the annual declarations of conflicts of interest made by staff working on the GEMS program since the commencement of the department in July 2022. Of the 44 staff identified as being active in 2024:

- 28 (64 per cent) submitted a conflict of interest declaration in 2024; and
- 16 (36 per cent), including the GEMS Regulator, did not submit a conflict of interest declaration in 2024.<sup>51</sup>

2.57 The Gifts and Benefits Policy requires that 'gifts over AUD\$100 (GST exclusive) must be recorded through Lighthouse within 10 working days of the gift being given'. It notes that 'Gifts up to and including AUD\$100 (GST exclusive) do not need to be reported.' In December 2024, the department advised the ANAO that no gifts or benefits have been reported as offered to or received by staff supporting the GEMS program.

#### *Requirements for non-departmental staff*

2.58 Regulatory decisions made by the GEMS Regulator and delegates often rely on testing, inspection and processing that is conducted by non-departmental staff. For example, agreements with state governments to provide support for the processing of applications for registration of GEMS products and market surveillance as well as contract arrangements with laboratories to conduct check testing.

2.59 The Conflicts of Interest Policy states that 'as a condition of their contract, contractors are required to advise of any potential conflicts of interest arising during the period of the contract' and that 'those with the responsibility of such appointments, must ensure they have an adequate process in place to allow appointees to declare any conflicts of interest'. In December 2024, the department advised the ANAO that probity for these arrangements is managed through contract management processes.

2.60 The contracts with state governments and check test laboratories, for the provision of services to support the administration of GEMS, included a conflict of interest clause that required the supplier to:

- warrant that no conflict of interest exists or is likely to arise and that any conflicts of interest have been declared; and
- if a conflict of interest arises, the supplier will immediately:
  - notify the department; and

50 Lighthouse is a financial management compliance system, hosting forms related to finance, integrity, security and other corporate functions.

51 In March 2025, the department advised the ANAO that, as at 6 March 2025, 'staff currently working in GEMS at DCCEEW [have] completed a conflict of interest declaration'.

- comply with any reasonable request or steps required by the department to resolve or otherwise manage the conflict.

2.61 The department explained that ‘Contractors would declare any potential conflicts or gifts to the contract manager, who would then ensure that the conflict or gift is registered and assessed in line with [the department’s] policy.’ In December 2024, the department advised the ANAO that no contractors have declared conflicts of interest or any offered or received gifts or benefits.

2.62 In January 2025, the department updated its standard operating procedures for GEMS market surveillance inspections to require departmental and state-based GEMS Inspectors to complete a conflict of interest declaration prior to the commencement of inspection activities (in store and online).

2.63 In May 2025, the department advised the ANAO that, as at 29 April 2025, one conflict of interest has been declared by a stated-based GEMS Inspector. The details of the identified conflict of interest and management plan is documented in the 2024–25 Inspection Monitoring Plan.

## Are appropriate policies, procedures and systems in place?

The department has established policies, procedures or guidance documents to outline how the GEMS Regulator’s powers and functions should operate. The GEMS Register includes fields to record 75 per cent of the information required by the GEMS Act. The GEMS registration system operated without an authority to operate until March 2025, when the system was granted authority to operate. The department had not established segregation of duties controls for the processing of applications to register a GEMS product. Between 2019–20 and 2023–24, there were 439 instances (1.5 per cent) where an application had been assessed and approved by the same individual and six instances (46 per cent) where an application was assessed and refused by the same individual.

2.64 The GEMS Act outlines the powers and functions of the GEMS Regulator. Section 71 lists the key functions of the GEMS Regulator, including to:

- administer the GEMS Act;
- maintain the GEMS Register;
- assist in developing GEMS determinations, including by undertaking or commissioning research in relation to GEMS determinations and product classes that are, or could be, covered by a GEMS determination;
- provide information and advice in relation to GEMS determinations and product classes that are, or could be, covered by a GEMS determination;
- provide information and advice in relation to the operation of the GEMS Act;
- monitor and enforce compliance with the GEMS Act; and
- review and evaluate the operation of the GEMS Act.<sup>52</sup>

<sup>52</sup> *Greenhouse and Energy Minimum Standards Act 2012*, section 71.

## Policies, procedures and guidance

2.65 The department has largely established policies, procedures and/or guidance documents to outline how the GEMS Regulator's powers and functions should operate. The department has not established policies, procedures and/or guidance documents that outline the process for:

- imposing conditions<sup>53</sup> on a model's registration (section 45 of the GEMS Act);
- requiring the provision of information or for a registrant to appear before the GEMS Regulator (sections 56, 123 and 124); and
- publicising information about responses to non-compliance (section 162).

2.66 GEMS policies, procedures and guidance documents largely outline the processes for exercising the powers and functions delegated to departmental staff. The department had not established procedures and/or guidance documents that outline the process for investigating suspected non-compliance (see paragraphs 3.91 to 3.92).

2.67 Of the policies, procedures and/or guidance (as at October 2024):

- 53 per cent included evidence of approval of the document; and
- 45 per cent had been created (or reviewed) within the last five years (noting that 25 per cent were undated).

2.68 In July 2024, the department advised the ANAO that it is developing a 'new approach to developing determinations that will be refined going forward' and that it plans 'to develop SOPs based on this new process in future, to streamline Determination development'. In August 2024, the department advised the ANAO that it had 'no knowledge or record of old SOPs/policies' that outline the previous/current process for the development of GEMS determinations.

2.69 The GEMS Compliance Policy states that 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.'<sup>54</sup>

2.70 In September 2024, the department advised the ANAO that each work area is responsible for the establishment, review and maintenance of their own Standard Operating Procedures (SOPs) and guidance documents. The department does not have a central review schedule or central register for all GEMS policies, procedures and guidance documents.

2.71 In March 2025, the department established a central GEMS Policies, Procedures and Guidance Documents Register as well as standard operating procedures outlining the process for an initial review of policies, procedure and guidance documents and the establishment of a rolling review cycle.

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53 Section 45 of the GEMS Act provides for the GEMS Regulator to impose conditions on a model's registration in relation to a product class at any time by written notice given to the registrant. A condition must be 'reasonably appropriate and adapted to giving effect to the purposes of [the GEMS Act]'.

54 Australian Government, Energy Rating, *GEMS Compliance Policy*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy>, [accessed 11 January 2025], p. 6.

## GEMS Register

2.72 Section 17 of the GEMS Act states that products covered by a GEMS determination must be registered against that GEMS determination before they can be supplied or offered for supply in Australia.<sup>55</sup> Only one registration can exist for a model or family of models at a time in Australia.<sup>56</sup> Once a model has been registered, it may be supplied by anyone in Australia, not just the registrant. Models or families of models that are registered in New Zealand may be supplied in Australia.<sup>57</sup>

### *Information recorded on the GEMS Register*

2.73 Section 39 of the GEMS Act states that the ‘GEMS Regulator must establish and maintain a register to be known as the GEMS Register’. Section 40 of the GEMS Act and Part 5 of the Greenhouse and Energy Minimum Standards Regulation 2012 (GEMS Regulation) outline the information that must be recorded for each registration of a model or models of GEMS product. The database includes fields for nine (75 per cent) of the 12 elements of required information (Table 2.1).





**Table 2.1: Inclusion of required fields in departmental GEMS Register database**


Relevant provision of GEMS legislation		Included	ANAO comment
40(1)(a)	Product class	◆	N/A
40(1)(b)	The day the registration comes into force	◆	N/A
40(1)(c)	The day the registration ceases to be in force	◆	N/A
40(1)(d)	A unique identifier for the registration	◆	N/A
40(1)(e)	Model identifier for each model covered by the registration	◆	N/A
40(1)(f)	Brand or trademark (if any) used in connection with the supply of those models	◆	N/A
40(1)(g)	Names, with contact details, of the registrant and contact person in relation to the registration	◆	N/A
40(1)(h)	Whether the registration is suspended	◆	N/A

55 The registration period of GEMS products is five years, beginning on the day the registration comes into force. The GEMS Act provides for the GEMS Regulator to specify a shorter registration period for a product. If a product is suspended, its registration is extended by the number of days it was suspended.

56 Australian Government, Energy Rating, *Register a product*, available from <https://www.energyrating.gov.au/industry-information/understand-requirements/register-product> [accessed 22 January 2025].

57 The Trans-Tasman Mutual Recognition Arrangement between the Australian Government, Australian state and territory governments, and the New Zealand Government provides for mutual recognition principles relating to the sale of goods. Its objective is to remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand.

Relevant provision of GEMS legislation		Included	ANAO comment
40(1)(i)	Details to identify the relevant GEMS determination against which the model was registered, including the date the determination was made		Database does not include field for the date the determination was made.  The title of the GEMS determination was listed incorrectly in the database for two GEMS determinations.
40(1)(j)	Whether the model is taken to be registered against a replacement determination <sup>a</sup> and details to identify the relevant replacement determination, including the date the replacement determination was made		Database did not include a field for this information
40(1)(k)	Whether the model's registration is affected by a replacement determination and details to identify the relevant replacement determination, including the date the replacement determination was made		Database did not include a field for this information
GEMS Regulation	Specific contact details		N/A

Key:  There are fields for this data included in the database.

 There are fields for some of this data included in the database.

 The database did not include fields for this data.

Note a: Section 11 of the GEMS Act defines a replacement determination as a GEMS determination made in accordance with section 35 that specifies that it replaces another GEMS determination (a revoked determination).

Source: ANAO analysis of departmental records.

2.74 Section 39 of the GEMS Act states that 'the GEMS Regulator may publish on the internet part or all of the GEMS Register'. The parts of the GEMS Register that are published on the internet are referred to as the Energy Rating Registration Database, which lists all products registered in Australia and New Zealand.<sup>58</sup>

## Recommendation no. 2

2.75 The Department of Climate Change, Energy, the Environment and Water review and update the GEMS Register to ensure that it documents all information that it is required to document under the GEMS Act.

**Department of Climate Change, Energy, the Environment and Water response: *Agreed.***

58 Commonwealth of Australia, *Energy Rating Registration Database*, available from <https://reg.energyrating.gov.au/comparator/> [accessed 6 January 2025].

2.76 *The department will review the GEMS Register to ensure it documents all the information it is required to capture under the GEMS Act. The system will be updated to add the three additional fields identified by the ANAO as not currently captured in the GEMS Register. The department will ensure all required fields are integrated into the new GEMS System when it is built. The department notes that values for the three fields not currently included in the register can be accurately determined through other means, including by reference to legislative instruments.*

## **GEMS registration system**

2.77 The GEMS registration system<sup>59</sup> is used by the department to:

- maintain and publish the GEMS register;
- receive and process applications to register products; and
- document the results of market surveillance activities.

2.78 Between 2019–20 and 2023–24, 27,268 products were registered on the GEMS Register.<sup>60</sup> The five most common GEMS determinations that products were registered under included:

- 5091 (18.7 per cent) were registered under external power supplies;
- 3937 (14.4 per cent) were registered under air conditioners up to 65kW;
- 3802 (13.9 per cent) were registered under three phase cage induction motors;
- 2977 (10.9 per cent) were registered under computers; and
- 2737 (10.0 per cent) were registered under refrigerated cabinets.

2.79 In an internal departmental presentation in September 2024, the department reported that the first of the top three risks to the program was that the ‘GEMS program cannot be effectively administered’, stating that ‘The current GEMS registration system is ageing and not able to keep pace with expectations of the minimum requirements for regulatory practice.’ It explained that the impacts arising from this risk included:

- Regulated entities are dissatisfied with the system available to comply with GEMS regulations (in 2023 nearly 60% of businesses reported they were dissatisfied).
- Estimates from one industry body note that it requires 20 hours of engineering administration per application.
- Difficult to identify and detect fraudulent behaviour.
- Does not meet best practice guidelines in the Australian Government Investigation Standards.
- Cannot implement improvements to our regulatory business processes which would reduce the cost of regulating products and improve compliance and enforcement response.

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59 The GEMS registration system is also referred to as the Energy Rating Registration system, Energy Rating Product Registration System, and the GEMS Registration database system.

60 This data only includes products that were registered in Australia under the GEMS Act. It does not include products registered in New Zealand.



- Limits states and territories using the registration information to effectively administer energy subsidy schemes.

### *Authority to operate*

2.80 The Protective Security Policy Framework (PSPF) states that ‘All technology systems require authorisation to operate or be used in the entity’. It explains that ‘The authorisation process ensures that an appropriate level of security is being applied to the technology system and that residual security risks have been accepted by the relevant authority’.

2.81 In October 2024, the department advised the ANAO that the GEMS registration system was operating without an authority to operate. It explained that:

We were working towards getting authority to operate at DISR prior to the MOG to DCCEEW ... No authority to operate process has been started at DCCEEW.

2.82 In February 2025, the department’s cyber security section granted the GEMS registration system an Interim Authority to Operate for one month ‘to allow for a full security assessment of the GEMS Registration System’. In March 2025, the GEMS registration system was endorsed with a ‘full authority to operate’.

### *Segregation of duties*

2.83 The Attorney-General’s Commonwealth Fraud Prevention Centre (the Fraud Prevention Centre) states that segregation of duties is a fraud prevention measure, which is ‘the most common and cost-effective way to stop fraud’. Segregation of duties is when you:

Separate duties by allocating tasks and associated privileges for a business process to multiple staff. This is very important in areas such as payroll, finance, procurement, contract management and human resources. Systems help to enforce the strong separation of duties. This is also known as segregation of duties.

2.84 The Fraud Prevention Centre explains that:

Allowing a single person to perform all or multiple tasks within some processes may lead to:

- fraudulent payments
- unauthorised access, manipulation or disclosure of information
- poor management of decision-making and risk
- fraudulent requests or claims being processed
- the creation of fake vendors and fraudulent payments
- fraudsters concealing their activities.

2.85 The department had not established segregation of duties controls for the processing of applications to register a GEMS product. Between 2019–20 and 2023–24, there were 439 of 29,362 (1.5 per cent) instances where an application<sup>61</sup> had been assessed and approved by the same individual. Of the 13 applications<sup>62</sup> that were refused during the period, six (46 per cent) were assessed and refused by the same individual.

61 Applications that were assessed may be to register products, amend registrations, etc.

62 *ibid.*

2.86 In October 2024, the department advised the ANAO that contracted Energy Safe Victoria (ESV) employees and Executive Level 1 (EL1) departmental employees assessing applications for registration of GEMS products have both an assessor (TAO) account and an approver (Delegate) account on the GEMS Registration system. It explained that:

The contracted ESV staff who complete 80-90% of the assessments are considered Delegates under the relevant delegations to enter products onto the GEMS Register. To do so they have both a TAO user account and AD (Authorised Delegate) user account.

For DCCEE staff, all Registration sub-team members have a TAO user account and only the EL1 level staff have AD.

2.87 The department advised that 'There is no explicit requirement in a SOP or otherwise for the TAO and AD (delegate) to be different people, but this system does give you a warning message if this occurs.' It explained that 'It is our preferred practice that different people perform these roles, but on occasion due to staff shortages this has not been possible.'

2.88 In February 2025, the department updated its standard operating procedures for the assessment of registration applications to state that 'the Delegate will NOT be the same person as the TAO who made the recommendation for approval or refusal'.

2.89 In April 2025, the department advised the ANAO that it has 'implemented a system control in the Energy Rating registration system to prevent the same individual being the recommender [assessor] and decision maker [approver] on an application'.

2.90 Without effective segregation of duties, there is risk that products that do not meet the requirements of the relevant GEMS determination may be approved for registration. This also increases the risk of human error or corruption.

### Recommendation no. 3

2.91 The Department of Climate Change, Energy, the Environment and Water review all instances where registration applications had been assessed and approved or refused by the same individual to ensure that the decisions were appropriate.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

2.92 *The department has established controls to ensure appropriate segregation of duties is maintained, including system changes that prevent the same individual from assessing and approving or refusing an application, as well as updates to the relevant Standard Operating Procedure.*

2.93 *The department is reviewing instances where a registration application was assessed and approved or refused by the same individual between 2019–2020 and 2023–2024, to ensure the decisions were appropriate. This work has commenced and is expected to be completed by June 2025.*

### GEMS system replacement prototype

2.94 In August 2023, the department commenced a project to develop a system to replace the GEMS registration system. A presentation for the project kick-off meeting stated that 'A major uplift and rearchitect to the current business processes, technical landscape and a sustainable support

model are expected as “**must-haves**”<sup>63</sup> by the business, to deliver through the GEMS system project’. The project has two phases:

- Phase 1: ‘discovery, conceptual design, prototype and detailed functional specification for one regulated product’; and
- Phase 2: ‘build, test, transition to [business as usual]’.

2.95 In May 2024, Phase 1 was delivered. In September 2024, an internal departmental presentation outlined the risks of continuing to use the current GEMS Registration system and the benefits demonstrated by Phase 1 of the replacement system project. It stated that the staff supporting the GEMS program ‘have attempted to secure funding through the departmental capital processes and budget processes, none of which have been successful.’

2.96 As at February 2025, phase two of the replacement system project has not been approved. In February 2025, the department advised the ANAO that ‘a portion of the funds required to complete this project have been secured’ and that the department is ‘exploring a funding avenue through the DCCEEW Financial and Investment Committee.’

## Has an appropriate compliance plan been documented reflecting an assessment of compliance risk?

The department has established a GEMS Compliance Policy that outlines the department’s compliance objective. It has not established performance measures for the GEMS program’s compliance objective. The department has documented a risk-based approach for its compliance monitoring activities and responses to non-compliance. The GEMS program is not fully recovering its costs. Between 2019–20 and 2023–24, the GEMS program recovered an average of 65 per cent of its costs each financial year. GEMS fees have not been reviewed since 2016–17.

2.97 RMG 128: Regulator Performance states that best practice regulators ‘maintain a compliance and enforcement strategy that articulates the regulator’s approach to risk and how this informs decision-making, publishing where appropriate’<sup>64</sup> and ‘provide clear information about the rationale for compliance costs’.<sup>65</sup>

## Compliance policy

2.98 The GEMS Compliance Policy (compliance policy) was published on the Energy rating website in November 2018.<sup>66</sup> The compliance policy states that ‘The GEMS Regulator’s compliance objective is to maximise the number of responsible parties (individuals or organisations having

63 Bold in original quote.

64 Department of Finance, *RMG 128 Regulator Performance, Principle 2: Risk based and data driven*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-2-risk-based-and-data-driven> [accessed 17 January 2025].

65 Department of Finance, *RMG 128 Regulator Performance, Principle 1: Continuous improvement and building trust*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-1-continuous-improvement-and-building-trust> [accessed 24 February 2025].

66 Australian Government, Energy Rating, *GEMS Compliance Policy*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy> [accessed 11 January 2025].

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.’<sup>67</sup> The department has not established performance measures for its compliance objective.

2.99 The compliance policy states that 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.<sup>68</sup>

2.100 The department’s implementation of its approach to assisting responsible parties to understand the requirements of the GEMS Act is examined in paragraphs 3.1 to 3.14.

2.101 The compliance policy states that ‘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’. The department has established selection criteria for its compliance monitoring activities.<sup>69</sup> The department publishes annual GEMS Compliance Monitoring Programs<sup>70</sup>, which outline the GEMS Regulator’s check testing and market surveillance focus for each financial year.

2.102 The department’s implementation of its approach to compliance monitoring for the GEMS Act is examined in paragraphs 3.15 to 3.85.

2.103 The compliance policy states that ‘All GEMS Regulator responses will consider a responsible party’s history, [behaviour], motivation, and intention, and be proportionate to the risk posed by the non-compliance as demonstrated by the GEMS Compliance Continuum’.<sup>71</sup> The GEMS compliance continuum lists four levels of stakeholder behaviours and motivations and the corresponding levels of GEMS regulator responses (see Figure 2.2).

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67 *ibid.*, p. 2.

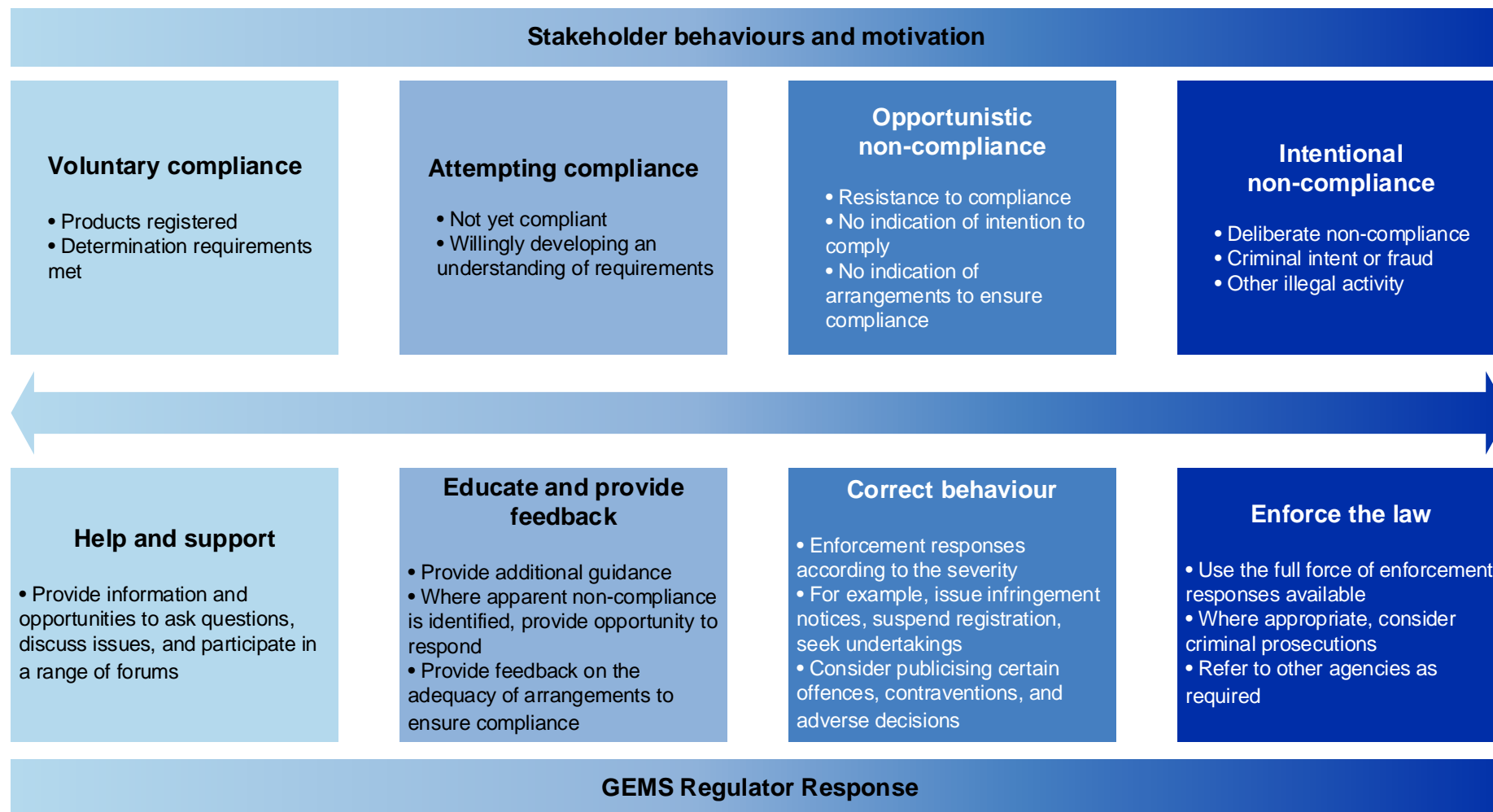
68 *ibid.*

69 Australian Government, Energy Rating, *Publications: GEMS Check Testing Selection Criteria*, 14 February 2023, available from <https://www.energyrating.gov.au/industry-information/publications/gems-check-testing-selection-criteria> [accessed 16 December 2024].

70 Australian Government, Energy Rating, *GEMS Compliance Monitoring Programs*, available from [https://www.energyrating.gov.au/industry-information/publications?combine=program&field\\_category\\_target\\_id=12&field\\_product\\_target\\_id=All&field\\_publication\\_type\\_target\\_id=6&field\\_publication\\_date\\_value=All](https://www.energyrating.gov.au/industry-information/publications?combine=program&field_category_target_id=12&field_product_target_id=All&field_publication_type_target_id=6&field_publication_date_value=All) [accessed 11 January 2025].

71 Australian Government, Energy Rating, *GEMS Compliance Policy*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy> [accessed 11 January 2025].

**Figure 2.2: GEMS compliance continuum**



Source: GEMS Compliance Policy, p. 5.

2.104 The department has established a Compliance and Enforcement Guide, which outlines the department's approach to responding to non-compliance with the GEMS Act. It was created in August 2022 and most recently reviewed in July 2024.

2.105 The department's implementation of its approach to responding to non-compliance with the GEMS Act is examined in paragraphs 3.90 to 3.130.

## **Cost recovery**

2.106 The Australian Government Cost Recovery Policy (CRP)<sup>72</sup> states that 'The Australian Government's overarching cost recovery policy is that, where appropriate, non-government recipients of specific government activities should be charged some or all of the costs of those activities.' The 2012–13 Budget Papers, in describing the establishment of the National Greenhouse and Energy Minimum Standards Program, state that:

The costs of product registration will be fully recovered, while recovery of the costs of compliance monitoring will be phased in from 2012-13, in accordance with the Australian Government Cost Recovery Guidelines.

2.107 The GEMS Program's Cost Recovery Impact Statement (GEMS CRIS) outlines the direct and indirect costs included in the charging arrangement:

The overall costs of the GEMS program include direct and indirect costs.

Direct cost attracted by the GEMS program and included in its charging arrangement cover:

- The cost of employee salaries and salary on-cost, such as superannuation loadings and long service leave loadings. Employee costs are allocated to the charging arrangement based on the amount of effort directed to the GEMS program by departmental staff.
- The cost of materials and services supplied to the department in direct relation to the GEMS program. These include contracted organisations who provide assessment services, undertake in-store compliance surveillance or undertake laboratory testing and access to relevant technical standards.

Indirect costs are also included in the charging arrangement to fund the necessary contribution to the GEMS program from the department's enabling services functions. These enabling services provide infrastructure, expertise and support GEMS program's human resource, financial management and information and communications needs.

There are no capital costs included in the charging arrangement.

## ***Legislation authorising charges***

2.108 Section 77 of the GEMS Act provides for the GEMS Regulator to 'charge fees for services provided by, or on behalf of, the GEMS Regulator in the performance of the GEMS Regulator's functions'. Section 8 of the *Greenhouse and Energy Minimum Standards (Registration Fees) Act 2012* (GEMS Registration Fees Act) provides for the GEMS Regulator to, 'by legislative instrument, specify fees (registration fees) for registration applications'.

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72 Department of Finance, *Australian Government Cost Recovery Policy*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-policy> [accessed 24 February 2025].

2.109 The Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025 sets out the fees payable for each GEMS determination. The Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services) Instrument 2019 specifies the fees payable for identified services provided by the GEMS Regulator associated with registrations. The fees payable to register a product under each GEMS determination and for identified services is at Appendix 4.

### *Cost Recovery Impact Statement*

2.110 The CRP requires that 'All cost recovered activities must be documented in a [Cost Recovery Impact Statement] CRIS before charging begins'. It states that the 'CRIS is an explanatory document that provides key information on how cost recovery for a specific government activity is implemented' and that 'After charging commences, the CRIS also becomes a continuous disclosure tool.'<sup>73</sup>

2.111 An internal audit of the GEMS program, completed in August 2023, found that 'the Regulator has not published a Cost Recovery Impact Statement' and recommended that 'the Regulator should complete and publish a CRIS as soon as practicable noting that a draft is currently in process.'

2.112 In April 2024, the department published a Cost Recovery Impact Statement titled 'Cost Recovery Implementation Statement GEMS 2022–2023' (GEMS CRIS). The ANAO assessed the GEMS CRIS against the requirements outlined in the CRP. The assessment also considered and referred to the CRIS template provided by the Department of Finance, which includes guidance of what should be included in each section of the CRIS.

2.113 Of the 13 requirements, one was assessed as not applicable. Of the remaining 12 requirements:

- seven (58 per cent) were met;
- four (33 per cent) were partly met; and
- one (eight per cent) was not met.<sup>74</sup>

2.114 RMG 302: Implementing the Charging Framework (RMG 302), states that 'the CRIS must be ... approved by the responsible Minister'.<sup>75</sup> The GEMS CRIS was not approved by the relevant minister.

2.115 In February 2025, the department advised the ANAO that it plans to complete the 2024–25 CRIS by June 2025.

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73 Department of Finance, *Australian Government Cost Recovery Policy*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/australian-government-cost-recovery-policy> [accessed 24 February 2025].

74 Due to rounding, the total of the percentages does not equal 100.

75 Department of Finance, *RMG 302: Implementing the Charging Framework, Regulatory Activities*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/regulatory-activities> [accessed 18 February 2025].



### Proportion of costs recovered

2.116 Between 2019–20 and 2023–24, the revenue collected by the GEMS program has not covered its costs for the financial years examined (see Table 2.2). Over this period, the GEMS program recovered an average of 65 per cent of its costs each financial year.<sup>76</sup>

**Table 2.2: GEMS program financial results, as reported in the department's<sup>a</sup> annual financial statements**

Financial year <sup>b</sup>	Revenue (from fees) \$ m	Expenses (cost-recoverable) \$ m	Net balance \$ m	Proportion of costs recovered %
2019–20	2.879	4.116	(1.236)	70
2020–21	4.039	4.323	(0.284)	93
2021–22	3.312	4.588	(1.277)	72
2023–24	2.974	11.618	(8.644)	26
<b>Average</b>	<b>3.301</b>	<b>6.161</b>	<b>(2.860)</b>	<b>65</b>

Note a: This table uses 'the department' to refer to the department(s) responsible for administering the GEMS Act at the time.

Note b: In May 2025, the department advised the ANAO that the 2022–23 reported expenditure did not include all departmental outputs delivered in relation to the regulation of Greenhouse and Energy Minimum Standards. Due to this, the 2022–23 data was excluded from the table and analysis.

Source: ANAO analysis.

2.117 In May 2025, the department advised the ANAO that reporting on financial results for the program 'are compiled by different parts of the agency, which has resulted in an inconsistent framing of the results, use of inconsistent source data and inconsistent recognition of transactions within and across the source data'. It explained that this is further complicated by changes to the reporting arrangements and loss of access to the data underlying past financial results following machinery of government changes in July 2022.

2.118 Inconsistent approaches to calculating and reporting on program financial results limits transparency as well as the department's ability to effectively monitor the cost of the program and the effectiveness of its cost recovery.

### Review of fees

2.119 RMG 302 states that 'The effectiveness of cost recovery involves the reliability and accuracy of the cost recovery model and related processes in measuring costs and reflecting those costs in the related charges.'<sup>77</sup> The 2012–13 Budget Papers, which established the policy basis for the cost

<sup>76</sup> In May 2025, the department advised the ANAO that the 2022–23 reported expenditure did not include all departmental outputs delivered in relation to the regulation of Greenhouse and Energy Minimum Standards. Due to this, the 2022–23 data was excluded from the analysis.

<sup>77</sup> Department of Finance, *RMG 302: Implementing the Charging Framework: Stage 3 – Implementation* available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/stage-3-implementation> [accessed 18 February 2025].

Department of Finance, *RMG 302: Implementing the Charging Framework, Regulatory Activities*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/implementing-charging-framework-rmg-302/regulatory-activities> [accessed 18 February 2025].



recovery arrangements for the GEMS program, stated that ‘The fees will be reviewed every three years’.

2.120 An internal audit of the GEMS program, completed in August 2023, found that ‘while the Regulator conducted a review of fees in 2016–17, there has not been a review of registration fees since that time’ and recommended that ‘the Regulator should conduct a review of GEMS fees to ensure it is avoiding or reducing unnecessary costs for stakeholders’.

2.121 The department agreed to the recommendation and stated that it would be implemented by 30 June 2025. In February 2025, the department advised the ANAO that the ‘fees review will commence once the 2024–25 CRIS has been completed’.

2.122 Without regular review of the fees and cost recovery arrangements for the GEMS program, the fees have become disconnected from the cost of the regulatory activity. This has resulted in the program being unable to fully recover its costs in accordance with its charging arrangements.

#### Recommendation no. 4

2.123 The Department of Climate Change, Energy, the Environment and Water review and update the fees for the GEMS program to ensure that its costs are fully recovered in accordance with its charging arrangements.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

2.124 *The department will conduct a review of the fees and charging arrangements for the GEMS program. The review will include consideration of the existing charging decision and implementation settings to ensure that cost recovery aligns with policy objectives.*

2.125 *In addition, the department continues to improve implementation and administration of charging arrangements through the development of instruction and guidance artefacts that align with the Australian Government Charging Framework.*

### 3. Implementation of regulatory approach

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#### Areas examined

This chapter examines whether the Department of Climate Change, Energy, the Environment and Water (the department)'s regulatory approach for the Greenhouse and Energy Minimum Standards (GEMS) program has been effectively implemented.

#### Conclusion

The department's implementation of its regulatory approach is partly effective. It uses the Energy Rating website to inform and engage with regulated entities. The department is undertaking compliance monitoring activities. The check testing conducted by the department is not informed by the department's assessment of compliance risk. There is a lack of direct access to records prior to 2020 and there are issues impacting the quality of data in the registers used to document compliance monitoring activities and investigations. This limits the quality and completeness of the department's records of its investigations of suspected non-compliance as well as its ability to effectively utilise the regulatory tools available under the GEMS Act. The GEMS Regulator has issued four infringement notices since the establishment of the program, all of which were not paid and were not enforced. The department is not measuring the program's impact on reducing energy consumption and carbon emissions and so cannot demonstrate whether the program is achieving its intended purpose.

#### Areas for improvement

The ANAO made five recommendations for the department to:

- review and improve its arrangements for recording and reporting on compliance monitoring activities;
- ensure that GEMS Inspectors have suitable training or experience to properly exercise the powers of a GEMS Inspector;
- review its assessment of compliance risk and its selection of compliance activities to ensure that they are focused on the areas where there is greatest risk of non-compliance;
- review and improve its arrangements for recording investigations into suspected non-compliance; and
- develop performance measure(s) that provide meaningful information on the effectiveness of the program in achieving its outcomes.

The ANAO identified one opportunity for improvement for the department to use a central database and a unique identifier to record allegations of suspected non-compliance to support the department's ability to effectively record and monitor the receipt, consideration and investigation of allegations of suspected non-compliance.

## Does the department undertake appropriate activities to encourage voluntary compliance?

The department uses the Energy Rating website to provide information to and engage with regulated entities to encourage voluntary compliance. GEMS Inspectors may also provide educational materials regarding the GEMS labelling and registration requirements to suppliers when conducting inspections. Stakeholder satisfaction surveys indicate that stakeholders are satisfied that the department provides them with the support they need to understand and comply with their obligations.

3.1 Resource Management Guide 128: Regulator Performance (RMG 128) states that best practice regulators ‘provide guidance and information that is relevant, clear, concise and easily accessible to help regulated entities understand their obligations and responsibilities to encourage voluntary compliance’.<sup>78</sup>

### Energy Rating website

3.2 The department publishes information about the GEMS program and energy efficiency on the Energy Rating website.<sup>79</sup> The department publishes information targeted at consumers, on topics such as:

- understanding the energy rating label;
- calculating how much money can be saved by choosing energy efficient appliances;
- what to consider when selecting and buying an energy efficient consumer appliance; and
- how to save energy.<sup>80</sup>

3.3 The department publishes guidance documents targeted at industry and regulated entities on its Energy Rating website, on topics such as:

- understanding the GEMS requirements;
- registering GEMS products;
- GEMS compliance activities; and
- energy efficiency policy and program development.<sup>81</sup>

78 Department of Finance, *RMG 128 Regulator Performance, Principle 3: Collaboration and Engagement*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-3-collaboration-and-engagement> [accessed 14 January 2025].

79 Australian Government, *Energy Rating*, available from <https://www.energyrating.gov.au/> [accessed 14 January 2025].

80 Australian Government, *Energy Rating, Consumer Information*, available from <https://www.energyrating.gov.au/consumer-information> [accessed 14 January 2025].

81 Australian Government, *Energy Rating, Industry information*, available from <https://www.energyrating.gov.au/industry-information> [accessed 14 January 2025].

3.4 The department publishes detailed guidance on how to register a product, outlining the registration process<sup>82</sup> and providing step-by-step guidance documents regarding how to use the GESM Registration system.<sup>83</sup>

3.5 The guidance available on the Energy Rating website is largely easy to find, accessible, and easy to understand. The majority of the articles outlining how to register a product in the GEMS Registration system included videos walking the viewer through the process (89 per cent). The videos were subtitled and included transcripts. Seventy-eight per cent of the articles included written step-by-step instructions with screenshots to illustrate the process.

#### *Communications and consultation with industry*

3.6 Between 15 December 2020<sup>84</sup> and 20 November 2024, 41 articles were published on the Energy Rating website.<sup>85</sup> The most common publications related to:

- changes to regulatory requirements (34 per cent);
- consultation on potential new regulatory requirements or changes to existing regulatory requirements (17 per cent);
- changes to the GEMS registration system (10 per cent); and
- compliance (10 per cent).

3.7 The department publishes issues papers, regulation impact statements and consultation/exposure drafts to consult with industry about potential new GEMS regulatory requirements or changes to existing regulatory requirements.

#### **Responding to enquiries**

3.8 The department provides an online form for members of the public to contact the GEMS Regulator.<sup>86</sup> The department has established standard operating procedures (SOP) for responding to enquiries as well as a database for GEMS enquiries (GEMS enquiries database).

3.9 The SOP outlines the most common types of enquiries that may be received as well as suggested actions to respond. This includes responding to enquiries regarding the requirements of the GEMS scheme. The SOP advises that disclaimers be applied to responses to technical product enquiries. It explains that:

Responses should state, where appropriate, that the advice is not legal advice and does not constitute formal advice; [it] is the responsibility of the enquirer to ensure they understand and meet their requirements under the GEMS Act.

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82 Australian Government, Energy Rating, *Register a product*, available from <https://www.energyrating.gov.au/industry-information/understand-requirements/register-product> [accessed 14 January 2025].

83 Australian Government, Energy Rating, *GEMS Registration system help section – suppliers*, available from <https://reg.energyrating.gov.au/application/help/> [accessed 14 January 2025].

84 The date of the first article published on the Energy Rating website (as showing in December 2024).

85 Australian Government, Energy Rating, *News and Stories*, available from <https://www.energyrating.gov.au/news-and-stories> [accessed 14 January 2025].

86 Australian Government, Energy Rating, *Contact us*, available from <https://reg.energyrating.gov.au/application/contact/> [accessed 16 January 2025].

3.10 The GEMS enquiries database records 3,960 enquiries received between 24 February 2022 and 5 September 2024. The ANAO examined the categories of enquiries recorded in the GEMS enquiries database (see Table 3.1).

**Table 3.1: GEMS enquiry database, number and proportion of enquiries received by category**

Category	Number received	Proportion of total %
Account management	1506	38
Product regulatory requirements	919	23
Registration system use	677	17
Other <sup>a</sup>	367	9
Amendments/cancellations	319	8
Website/calculator	145	4
Exemptions	27	1
<b>Total</b>	<b>3960</b>	<b>100</b>

Note a: The department advised the ANAO that the 'other' category is used as a 'catch all' to record enquiries that do not fall within the existing categories but are not common enough to have their own category. It explained that this may include 'consumer enquiries, enquiries about products or standards, user access, current/future legislation, potential non-compliance allegations or internal requests from other departmental staff.'

Source: ANAO analysis.

3.11 The most common enquiries are related to account management (38 per cent); product regulatory requirements (23 per cent) and registration system use (17 per cent).

3.12 The average number of days between the receipt of an enquiry and the closing of the enquiry is 5.2 in 2022 and 2023 and 2.7 in 2024. The maximum number of days between the receipt of an enquiry and the closing of an enquiry is 393 days. The minimum number of days between the receipt of an enquiry and the closing of an enquiry was less than one (where enquiries were closed on the same day they were received).<sup>87</sup>

## Education during compliance monitoring activities

3.13 The department has established a brochure regarding GEMS Inspections about 'what to expect during and after an inspection'. The standard operating procedures for GEMS market surveillance inspections instructs GEMS Inspectors to provide the brochure to the owner or manager of the store at the time of the inspection. It also encourages GEMS Inspectors to provide relevant educational materials to the owner or manager at the conclusion of the inspection.

## Stakeholder satisfaction surveys

3.14 The results of the most recent GEMS stakeholder satisfaction surveys reported that 74 per cent of stakeholders in 2022–23 and 81 per cent of stakeholders in 2023–24 were satisfied that the department provides them with the support they need to understand and comply with

<sup>87</sup> Of the 3,960 enquires recorded in the database, 97 either did not include a close date or included a close date that occurred prior to the receipt date. These enquiries were excluded from the ANAO's calculations.

their obligations. The GEMS stakeholder satisfaction surveys are examined in paragraphs 3.136 to 3.139.

## Does the department undertake appropriate activities to identify non-compliance?

The department is undertaking compliance monitoring activities (market surveillance, check testing and investigating allegations of non-compliance). The department's check testing records and reporting indicate that check testing activities have been decreasing. Forty-two per cent of GEMS Inspectors operating between 2019–20 and 2023–24 were fully compliant with the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector. The receipt of allegations of suspected non-compliance are not recorded in a central database.

3.15 The department's approach to compliance monitoring for the GEMS program comprises three key activities:

- check testing;
- market surveillance; and
- receipt of allegations.

### Check testing

3.16 The GEMS Act provides for the GEMS Regulator to test, sample and examine regulated products for the purpose of determining whether the product, or a model of the product, complies with the provisions of the relevant GEMS determination.<sup>88</sup>

3.17 The Greenhouse and Energy Minimum Standards Compliance Policy (GEMS Compliance Policy)<sup>89</sup> defines check testing as 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 and specifically minimum energy performance standards (referred to as MEPS);
- GEMS labelling requirements, as they relate to energy efficiency claims; and
- GEMS other requirements, which are performance requirements that may be specified in GEMS determinations.

3.18 The GEMS Compliance Policy states that 'check tests are conducted on behalf of the GEMS Regulator by National Association of Testing Authorities<sup>90</sup> accredited or affiliated bodies either in Australia or overseas'.

3.19 The department established the GEMS Check Testing Policy – with Validity Criteria (check testing policy), which was published on the department's website in March 2023. The check testing

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<sup>88</sup> *Greenhouse and Energy Minimum Standards Act 2012*, sections 63, 125 and 126.

<sup>89</sup> Australian Government, Energy Rating, *Publications: GEMS Compliance Policy*, 1 November 2018, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy> [accessed 16 December 2024].

<sup>90</sup> The National Association of Testing Authorities, Australia (NATA) is a national accreditation authority for analytical laboratories and testing service providers in Australia.

policy ‘outlines the principles used by the GEMS Regulator to verify, through laboratory testing, whether models of GEMS products (models) meet relevant GEMS requirements that apply to the product class against which they are registered’.

3.20 In March 2025, the department published an updated version of the check testing policy on the Energy Rating website.<sup>91</sup>

3.21 The check testing policy details the check testing process. The check testing validity criteria outlines:

- the Check Testing Validity Criteria for the Stage 1 Check Tests and Stage 2 Check Tests that are applied by the GEMS Regulator: and
- the number of samples of products (units) to be tested for the Stage 1 Check Tests and Stage 2 Check Tests, in relation to products registered against each of the relevant GEMS determination.

3.22 The department has established standard operating procedures outlining the process for arranging for models of GEMS products to be check tested.

#### *Records of check testing activities*

3.23 The department uses a spreadsheet to record its GEMS check testing activities (check testing register). The department has not documented instructions for the use of the check testing register. There are data quality issues with the data recorded in the check testing register.

- The department has not documented definitions of fields, codes and statuses used by the check testing register and does not limit entries within the register to the use of specific codes and status, which introduces the risk that fields, codes and statuses may be used incorrectly or inconsistently. These risks have been realised.
- Data recorded in the check testing register is not internally consistent. For example, of the 78 entries that listed their status as ‘active’, 53 (68 per cent) also recorded a final outcome, which implies that the entry is no longer active and that the ‘active’ statuses for these entries are inaccurate.
- The check testing register does not consistently record the date that check testing activities occur. For example, the ‘test year’ field uses financial year and the ‘finalised year’ field uses calendar year from 2012 to 2021 and then changes to financial year from 2021–22.

3.24 The check testing register records the brand of the model being tested but does not record the registrant, which may limit the department’s ability to interrogate data and identify repeated non-compliance by a registrant.<sup>92</sup>

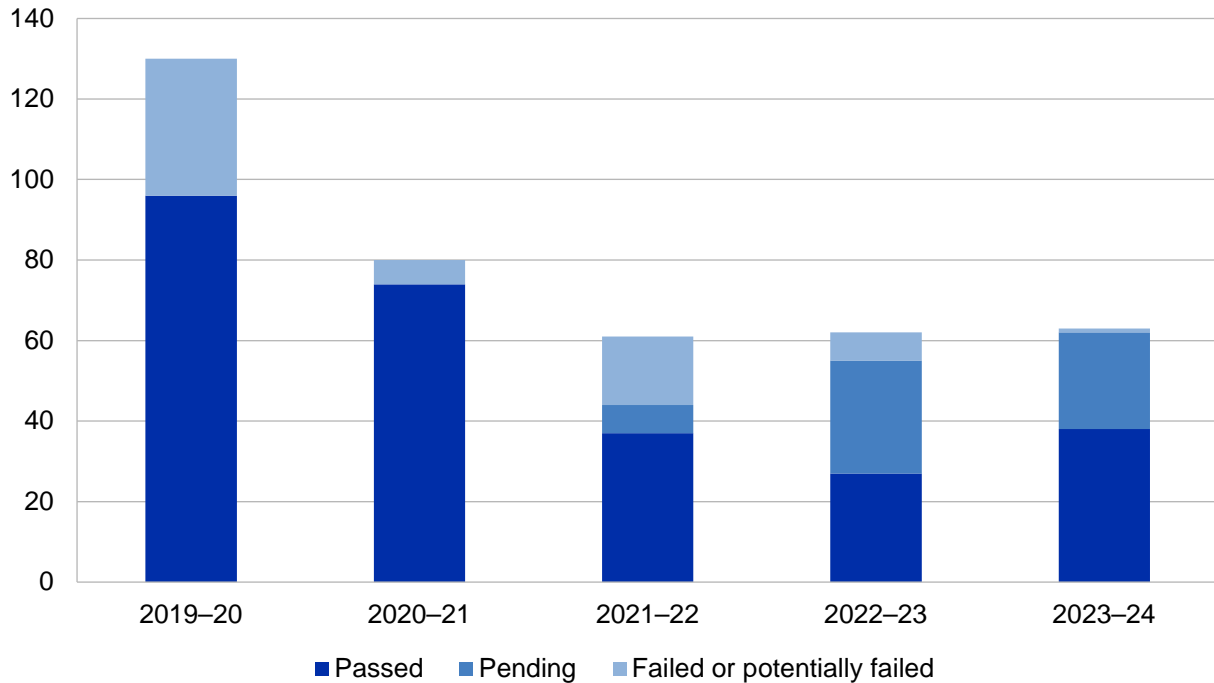
91 Australian Government, Energy Rating, *GEMS Check Testing Policy - with Validity Criteria*, 18 March 2025, available at <https://www.energyrating.gov.au/industry-information/publications/gems-check-testing-policy-validity-criteria> [accessed 6 May 2025].

92 Section 17 of the GEMS Act requires that products covered by a GEMS determination must be registered against that GEMS determination before they can be supplied or offered for supply in Australia. Only one registration can exist for a model or family of models at a time in Australia. Once a model has been registered, it may be supplied by anyone in Australia, not just the registrant. Models or families of models that are registered in New Zealand may be supplied in Australia.



3.25 The department publishes reports on its check testing activities on the Energy Rating website and in the GEMS annual report, which is published as part of the department’s annual report. Due to the issues limiting the quality of the data recorded in the check testing register, the ANAO was unable to verify the accuracy of the check testing data reported in either the check testing results or the GEMS annual reports. The number of models tested, as reported in the GEMS annual reports, is illustrated in Figure 3.1.

**Figure 3.1: Check testing activities and results, as reported in GEMS annual reports, 2019–20 to 2023–24**



Note: The department has changed how it reports on check testing activities and results from models tested to models selected for testing. For 2019–20 and 2020–21, check testing activities are reported as ‘the GEMS Regulator completed check tests of [x] models’. For 2021–22 to 2023–24, check testing activities are reported as ‘the GEMS Regulator selected [x] models ... for testing’.

Source: GEMS annual reports.

3.26 The department’s check testing records and reporting indicate that check testing activities have been decreasing. Analysis of the check testing register data<sup>93</sup> showed that the average number of check testing activities each financial year between 2013–14 and 2023–24 was 93. The highest number was in 2013–14, with 188 models, and the lowest was 2021–22, with 61 models.

3.27 In May 2025, the department advised the ANAO that ‘after the 2018–19 years, no further [incandescent and compact fluorescent lighting products] were initiated for check testing (products being phased out)’ and that ‘this has likely contributed to the overall decrease in check tests conducted in any following year’.

93 Due to the issues limiting the quality of the data recorded in the check testing register (see paragraphs 3.23 to 3.24) and the shifting definitions in the data reported in the annual reports, the number of models tested each year could not be verified.



3.28 In May 2025, the department established standard operating procedures for product selection for the GEMS annual check testing program. It states that, ‘the Check Testing program aims to check test 60–70 products annually’.

3.29 There is a risk that decreasing the number of models check tested may limit the department’s ability to effectively provide assurance that models are compliant with GEMS level requirements, GEMS labelling requirements (as they relate to energy efficiency claims) and GEMS other requirements (performance requirements that may be specified in GEMS determinations).

3.30 In April 2025, the department established standard operating procedures for annual reporting for GEMS Check Testing.

3.31 The quality of the department’s records of its check testing activities limits the department’s ability to effectively oversee, evaluate and manage its check testing activities.

### Recommendation no. 5

3.32 The Department of Climate Change, Energy, the Environment and Water review and improve its arrangements for recording and reporting on compliance monitoring activities to ensure that its records are complete and its reporting is accurate and verifiable.

**Department of Climate Change, Energy, the Environment and Water response: Agreed.**

3.33 *The department will continue to build on its established arrangements for record keeping and reporting on compliance monitoring activities. The department has reviewed and updated its data management of check testing results to ensure consistency and increased accuracy in its reporting. This has included adding instructional fields in its check testing register, and the development of a Standard Operating Procedure in compiling Annual Report statistics. Further improvements will be integrated when the new GEMS system is built, including the implementation of electronic case management to further strengthen the Compliance and Enforcement function of GEMS.*

### Market surveillance

3.34 The Greenhouse and Energy Minimum Standards Compliance Policy (GEMS Compliance Policy) defines market surveillance as activities<sup>94</sup> undertaken to ensure that models of GEMS products in the marketplace meet:

- GEMS registration requirements; and
- GEMS labelling requirements of the relevant GEMS determination.

3.35 The GEMS Compliance Policy explains that market surveillance is conducted by GEMS Inspectors, and is ‘focused on retailers, suppliers, importers, and where applicable, manufacturers’.<sup>95</sup>

94 Market surveillance activities comprise inspecting and photographing GEMS products to determine compliance with GEMS registration and GEMS labelling requirements and may be conducted in-person at a supplier’s premises or online.

95 Australian Government, Energy Rating, *Publications: GEMS Compliance Policy*, 1 November 2018, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy> [accessed 16 December 2024].

3.36 The department has established standard operating procedures outlining the process for conducting GEMS market surveillance inspections (market surveillance SOP) in physical stores. The market surveillance SOP did not outline the process for conducting market surveillance for online stores.

3.37 In January 2025, the department updated its market surveillance SOP to include the process for conducting an online inspection of a supplier/retailer.

### *GEMS Inspectors*

3.38 Section 82 of the GEMS Act provides for the GEMS Regulator to appoint an officer or employee of an agency of the Commonwealth, a state or a territory as a GEMS Inspector. It requires:

- that the GEMS Inspector be appointed in writing;
- that the GEMS Regulator be satisfied that the person appointed has suitable training or experience to properly exercise the powers of a GEMS Inspector; and
- the agreement of the Commonwealth agency or, if the agency is an agency of a state or territory, the agreement of the state or territory.

3.39 The department has established guidelines for the appointment of GEMS Inspectors, which document the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector. These are:

- experience working in a current or former Commonwealth, State, or Territory energy efficiency regulator or similar agency;
- a current role with the Department of Climate Change & Energy, the Environment & Water Energy Efficiency Compliance Section or similar State or Territory government body; and,
- have commenced a Certificate IV Government (Statutory Compliance) or similar qualification and agreed to a suitable completion timeframe with the Section Manager.

3.40 The GEMS Regulator has appointed GEMS Inspectors from within the department as well as from Victoria, South Australia and Western Australia.

3.41 All 24 of the GEMS Inspectors (Commonwealth and state) operating between 2019–20 and 2023–24 were appointed in writing. Of these, 10 (42 per cent) were fully compliant with the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector and 14 (58 per cent) were partly compliant. Of the 24 GEMS Inspectors that operated between 2019–20 to 2023–24:

- one (four per cent) did not have experience working in a current or former Commonwealth, State or Territory energy efficiency regulator or similar agency;
- 24 (100 per cent) had a current role with the department's Energy Efficiency Compliance Section or similar state or territory government body; and
- nine (38 per cent) did not have Certificate IV Government (Statutory Compliance) or similar.

## Recommendation no. 6

3.42 The Department of Climate Change, Energy, the Environment and Water ensure that GEMS Inspectors are compliant with the minimum requirements used for the GEMS Regulator to be satisfied that a person has suitable training or experience to properly exercise the powers of a GEMS Inspector.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

3.43 *The department has consolidated a list of GEMS inspectors in a centralised register to record details of training and experience. The department has also updated the GEMS Appointment Guidelines to outline a detailed, step-by-step process for appointing a GEMS Inspector. The GEMS Regulator is satisfied that all 18 currently appointed GEMS inspectors have suitable training or experience to properly exercise the powers of the GEMS Inspector.*

### *Records of market surveillance activities*

3.44 The department uses the GEMS registration system to record the outcomes of its GEMS market surveillance activities (compliance monitoring reports). The department also uses a spreadsheet to monitor its market surveillance activities (market surveillance register).

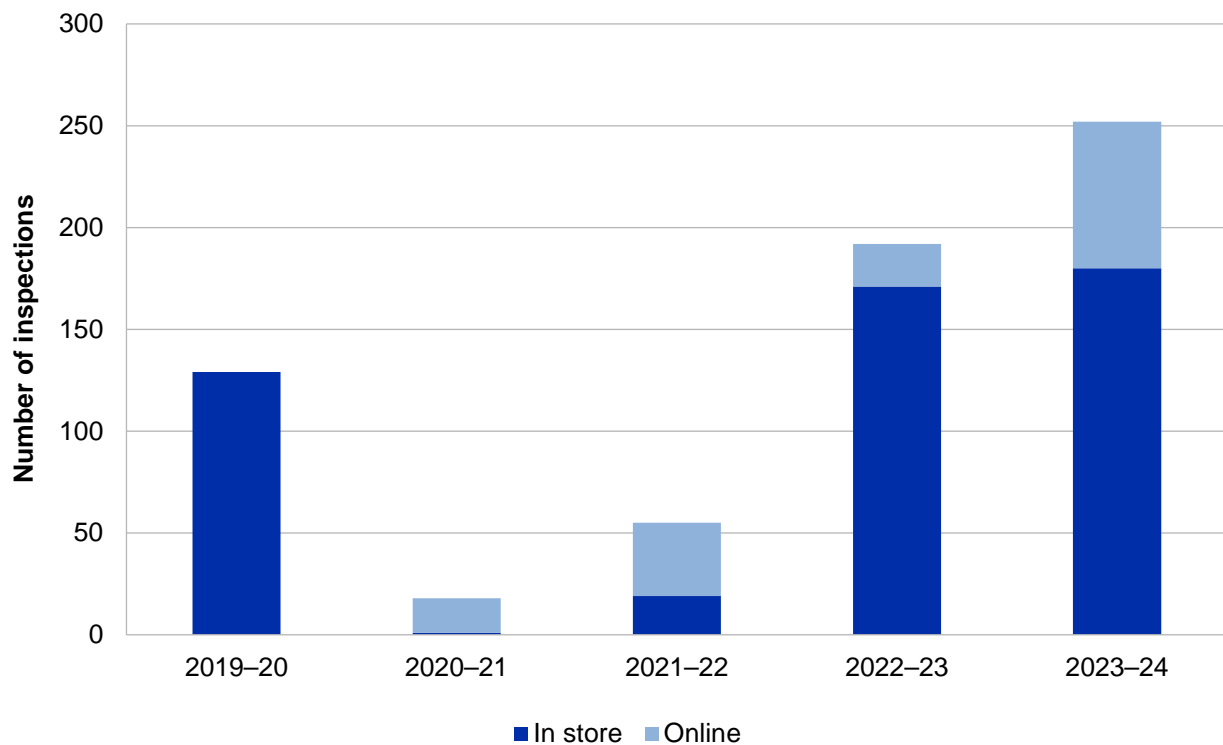
3.45 The market surveillance SOP requires that data for the compliance monitoring report be compiled 'as soon as practicable following the inspection'. The department has established instructions for completing a compliance monitoring report as well as definitions and explanations for what information should be entered into each field.

3.46 The compliance monitoring reports data records 664 individual inspections carried out between 2 July 2019 and 4 October 2024 (Figure 3.2). Of the 664 inspections:

- 502 were conducted in store;
- 159 were conducted online; and
- three inspections could not be conclusively determined whether the inspection was conducted in store or online.<sup>96</sup>

<sup>96</sup> The categorisation of 'in store' and 'online' was determined based on whether the 'address' field contained a street address or a website address. For the three inspections where it was not clear, this field contained both forms of address.

**Figure 3.2: Number of inspections recorded by financial year, 2019–20 to 2023–24**



Notes: Three inspections were excluded from the data used, as it could not be clearly identified whether they were in store or online.

The department reported that inspection activities in 2020–21 and 2021–22 were impacted by the COVID-19 pandemic, bushfires and weather events.

Source: ANAO analysis of departmental data.

### Receipt of allegations

3.47 The GEMS Compliance Policy explains that ‘the GEMS Regulator receives allegations of suspected non-compliance with the GEMS Act from a variety of sources.’ The Energy Rating website provides an email address for members of the public to provide information about suspected non-compliance.<sup>97</sup>

3.48 For the period between 2022–23 and 2024–25<sup>98</sup>, 17 allegations of non-compliance were recorded in three registers:

- seven were recorded in the enquiries database (database);
- five were recorded in the market surveillance register (spreadsheet); and
- five were recorded in the enforcement register (spreadsheet).

3.49 There was not enough data included in the entries to determine whether the entries across the three registers were related to the same allegations of suspected non-compliance.

97 Australian Government, Energy Rating, *Report non-compliance*, available from <https://www.energyrating.gov.au/industry-information/compliance/report-non-compliance> [accessed 10 January 2025].

98 Some of the records of allegations did not include specific dates but listed the financial year.

3.50 Of the five allegations of non-compliance that were recorded in the enforcement register:

- one returned to compliance following a warning letter<sup>99</sup>;
- two resulted in registrations being cancelled at the request of the registrant;
- one is waiting on check testing results; and
- one is waiting on information.

#### Opportunity for improvement

3.51 A central database for recording allegations of suspected non-compliance as well as the use of a unique identifier for each allegation, which is used by all GEMS spreadsheets and databases, would support the department's ability to effectively record and monitor the receipt, consideration and investigation of allegations of suspected non-compliance.

### Is the department's regulatory approach informed by an assessment of compliance risk?

The department has established selection criteria for the assessment of compliance risk for its compliance monitoring activities. In 2023–24 and 2024–25, the department's assessment of compliance risk (to inform check testing) included products registered under less than half of GEMS determinations. The department is not using the assessment of compliance risk it has produced to inform its selection of models for check testing. Sixteen per cent of models check tested in 2023–24 were assessed as within the top 10 highest risk models for their product category. The majority (62 per cent) of models check tested had not been assessed for compliance risk. The ANAO was not able to determine whether the assessment of compliance risk was used to inform the selection of market surveillance activities, as 2024–25 was the department's first year using its current approach.

3.52 RMG 128 states that 'A risk based approach allows a regulator to properly assess the risks of non-compliance and respond in a proportionate way to the harm being managed'. It explains that:

Strategic management of risk can also improve efficiency by prioritising resources to the areas of highest risk, and increase compliance by focusing limited resources on the areas of the greatest risk of non-compliance. It can also reduce the overall compliance and cost burden by minimising government intervention where the risks are relatively low.

### Check testing

3.53 The GEMS Compliance Policy states that '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'. The Check Testing Selection Criteria explains that:

The objectives of this approach are:

<sup>99</sup> See case study 1.

- to identify models with a higher than average risk of failure to meet GEMS level requirements relating to minimum energy performance standards (MEPS) or energy performance claims;
- to identify models with the greatest potential impact on energy use and greenhouse gas production; and,
- to check test as many of these models as possible.

3.54 The Check Testing Selection Criteria outlines the criteria that will be used to achieve these objectives.

3.55 The check testing selection process is supported by Energy Efficient Strategies (EES)<sup>100</sup>, a firm that is contracted by the department to:

Provide expert technical advice in relation to the GEMS Check Testing Program for products regulated under the Greenhouse and Energy Minimum Standards Act (GEMS) Act 2012; services including but not limited to:

- advice on laboratory check testing reports (stage 1 and stage 2)
- analysis and compilation of GEMS registered products for check testing selection, and
- related policy and/or general advice.

3.56 The department selects and advises EES of the GEMS determinations (i.e. product types) to be included in the assessment of compliance risk. EES prepares a check testing selection report for the department, which outlines the data and methodology used to inform the assessment of compliance risk as well as screenshots of the spreadsheets listing the outcomes of EES' assessment. EES also provides copies of these spreadsheets (check testing selection spreadsheet) with the outcomes of its assessment of compliance risk for models registered under the GEMS determinations (i.e. product types) selected by the department.

3.57 The check testing selection report explains that 'when selecting models to [check test], an initial process was undertaken to narrow the field for selection' which included:

- Inclusion of only products with an Approved registration.
- Inclusion of only models that had not previously been [check tested]
- Inclusion only of products nominated as available in Australia where testing is to be undertaken. Noting that many products available in Australia are also available in New Zealand but some products are only available in New Zealand, these were not selected;
- Exclusion, or only limited inclusion of products likely to incur a significant initial capital cost and testing costs. Mainly this related to the limited inclusion of three phase ducted air-conditioners and particularly the avoidance of high capacity three phase air-conditioners which are not only expensive to purchase and test but are often outside the testing capability of the available test laboratories in any case. Very large electric motors were also avoided as these incur a significant capital cost.

3.58 The check testing selection report outlines the methodology and weightings that was used for the assessment of compliance risk.

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100 The total contract value is \$130,000. See AusTender, *Contract Notice View – CN3963076*, available from <https://www.tenders.gov.au/Cn/Show/d72227cb-6a4c-4aeb-84c9-d41a58f30d35> [accessed 25 March 2025].

3.59 In January 2025, the department advised the ANAO that EES assesses compliance risk for all models registered under the GEMS determinations that are selected for assessment by the department. The department further advised that the check testing selection spreadsheets provided by EES to the department included ‘models ... that had the highest aggregate risk score’.

3.60 Of the 10 tabs in the 2023–24 check testing selection spreadsheet (one tab was used per product category), three tabs (air conditioning, washers and computer monitors) included incorrect calculations of the compliance risk:

- in the air conditioning tab, 49 of the 92 (53 per cent) calculations were incorrect; and
- in the computer monitor tab, 11 of the 36 (31 per cent) calculations were incorrect.

3.61 Of the 10 tabs in the 2024–25 check testing selection spreadsheet (one tab was used per product category), two tabs (air conditioning and computer monitors) included incorrect calculations of the compliance risk:

- in the air conditioning tab, seven of the 34 (21 per cent) calculations were incorrect; and
- in the computer monitor tab, 11 of the 23 (48 per cent) calculations were incorrect.

3.62 The ANAO assessed the process for assessing compliance risk and selecting models for check testing in 2023–24 and 2024–25 to determine if the Check Testing Selection Criteria is being applied. Of the nine Check Testing Selection Criteria:

- four (44 per cent) were used in the department’s assessment of compliance risk for 2023–24 and/or 2024–25;
- two (22 per cent) were partly used in the department’s assessment of compliance risk for 2023–24 and/or 2024–25; and
- three (33 per cent) were not used in the department’s assessment of compliance risk for 2023–24 and/or 2024–25.<sup>101</sup>

3.63 In March 2025, the department updated its Check Testing Selection Criteria.<sup>102</sup>

#### *Selection of GEMS determinations for assessment of compliance risk*

3.64 The department’s assessment of compliance risk does not include consideration of products registered under all GEMS determinations. The reasoning for the selection of GEMS determinations (also referred to as ‘product categories’) to be included in the assessment of compliance risk is not documented. In January 2025, the department advised the ANAO that:

Products categories are primarily scoped by the availability of accredited laboratories. Check testing is conducted by National Association of Testing Authorities (NATA) accredited or affiliated laboratories either in Australia or overseas on products selected and acquired by (or on behalf of) the GEMS Regulator.

...

<sup>101</sup> Due to rounding, the total of the percentages does not equal 100.

<sup>102</sup> Australian Government, Energy Rating, *Publications: GEMS Check Testing Selection Criteria*, 12 March 2025, available from <https://www.energyrating.gov.au/industry-information/publications/gems-check-testing-selection-criteria> [accessed 25 March 2025].

Available NATA accredited laboratories are contracted and engaged from the evaluation of the Open Tender process. Scoping and assessment of what services each lab can offer in product check testing, assists in development of the product category compliance risk.

GEMS product registration data from the previous 2-3 years are examined. Check testing register and previous yearly pass/fail product results are examined. All GEMS teams are consulted for input into the product category selections. Number of selections for each product category is forecast in line with pre-approved budgets derived from Tender Evaluation report/process.

3.65 In November 2024, the department advised the ANAO that ‘for [GEMS products] where there are no NATA accredited labs [the models] could be check [tested] outside of Australia ... but high cost, timing and management of contracts outside of Australia make it difficult.’

3.66 The 2023–24 assessment of compliance risk considered 10 of the 24 (42 per cent) GEMS determinations that were in force during the period. The 2024–25 assessment of compliance risk considered 10 of the 21 (48 per cent) GEMS determinations that were in force during the period.

3.67 The check testing results reports state that:

- 10 product categories were check tested in 2023–24;
- 10 product categories were check tested in 2022–23;
- 10 product categories were check tested in 2021–22; and
- 12 product categories were check tested in 2020–21.

3.68 In November 2024, the department advised the ANAO that it does not conduct check testing for products registered under seven GEMS determinations (Table 3.2).

**Table 3.2: GEMS determinations that the department advised are not check tested**

GEMS determination	Reasons given by department for not check testing
GEMS determination 1	<ul style="list-style-type: none"> <li>• High cost</li> <li>• Low registration numbers</li> </ul>
GEMS determination 2	<ul style="list-style-type: none"> <li>• High cost</li> <li>• Low registration numbers</li> </ul>
GEMS determination 3	<ul style="list-style-type: none"> <li>• High cost</li> <li>• No contracted NATA lab</li> </ul>
GEMS determination 4	<ul style="list-style-type: none"> <li>• High cost</li> <li>• Low registration numbers</li> <li>• Products are being phased out</li> </ul>
GEMS determination 5	<ul style="list-style-type: none"> <li>• High cost</li> <li>• Low registration numbers</li> <li>• Products are being phased out</li> </ul>
GEMS determination 6	<ul style="list-style-type: none"> <li>• High cost</li> <li>• No contracted NATA lab</li> </ul>



GEMS determination	Reasons given by department for not check testing
GEMS determination 7	<ul style="list-style-type: none"> <li>• High cost</li> <li>• Low registration numbers</li> <li>• Products are being phased out</li> </ul>

Source: ANAO analysis and advice from department.

3.69 The department has not advised the Energy and Climate Change Ministerial Council (ECMC) or the Minister that it is not monitoring compliance with GEMS level requirements, GEMS labelling requirements (as they relate to energy efficiency claims) and GEMS other requirements (performance requirements that may be specified in GEMS determinations) for the above seven GEMS determinations.

3.70 In February 2025, the department advised the ANAO that it does not have evidence of the costs to conduct check testing for the above GEMS determinations to support the 'high cost' reason given for not check testing the GEMS determinations.

3.71 In February 2025, the department advised the ANAO that it has not sought quotes for other bodies that are authorised to conduct check testing by the Greenhouse and Energy Minimum Standards (Authorisation Requirements for Testing GEMS Products) Instrument 2021 to seek to address the 'no contracted NATA lab' reason for not check testing. It explained that:

The department has not yet explored the option of using other international bodies outside NATA accreditation, but will explore the feasibility of engaging overseas laboratories that are authorised to conduct check testing under the GEMS (Authorisation Requirements for Testing GEMS Products) Instrument 2021 so all regulated products may be considered for check testing.

3.72 In February 2025, the department advised the ANAO that 'In practice, the threshold for low registration is considered anything less than 200.'

### *Selection of models for check testing*

3.73 The check testing conducted by the department is not informed by compliance risk. Of the 63 products check tested in 2023–24, 10 (16 per cent) had been assessed as within the top 10 highest risk models for their product category. The majority (62 per cent) of models check tested had not been assessed for compliance risk. Of the 24 models check tested that had been assessed for compliance risk, 10 (42 per cent) were assessed as being within the top 10 highest risk models for their product category.

## **Market surveillance**

3.74 In August 2023, an internal audit found that 'documented processes for market surveillance do not demonstrate how data and intelligence are used to inform a risk-based approach'. It recommended that the department 'describe and document how it uses data and intelligence to inform its approaches to market surveillance in relevant SOPs'.

3.75 In February 2024, the department established:

- Market Surveillance Selection Criteria;
- a market surveillance selection workbook, which is a spreadsheet to assess compliance risk; and

- standard operating procedures for selecting and determining products for the GEMS annual market surveillance program.

3.76 The Market Surveillance Selection Criteria state that ‘selection of instore and online monitoring activities uses an intelligence led risk-based approach’. It explains that:

The objectives of this approach are:

- to identify products with a higher-than-average risk of failure to meet GEMS registration and labelling requirements, and requirements relating to minimum energy performance standards (MEPS) or energy performance claims;
- to identify retailers and suppliers of these products with a higher-than-average risk of opportunistic or intentional non-compliance;
- to monitor as many GEMS products and retailers and suppliers of these products as possible; and,
- to educate and encourage voluntary compliance.

3.77 The Market Surveillance Selection Criteria outline the criteria that are ‘considered by the GEMS Regulator when determining which models of GEMS products (models) and their suppliers will be selected for annual market surveillance monitoring’.

3.78 The department uses a spreadsheet (market surveillance selection workbook) to assesses the compliance risk of product types; brands; and suppliers. It asks questions and considers data sources that sit within the selection criteria and which are weighted from 1 (less important) to 5 (very important). The completed market surveillance selection workbook produces a list identifying the compliance risk for the 10 highest risk of each:

- product category;
- brand;
- physical retailer; and
- online retailer.

3.79 The market surveillance selection workbook has instructions that document how the workbook should be used. The standard operating procedures for selecting and determining products for the GEMS annual market surveillance program outline how to collect and record the data used by the market surveillance selection workbook.

3.80 The ANAO analysed the function of the 2024–25 market surveillance selection workbook to determine whether formulas and other automated functions within the workbook achieved their expected purposes. Of the 55 formulas used by the workbook, the outcomes of:

- 11 formulas (20 per cent) will be correct;
- 35 formulas (64 per cent) will be incorrect, as the formula relies on the outcomes of a previous formula, which is incorrect; and
- nine formulas (16 per cent) will be incorrect, as the formula introduces a new error.

3.81 This resulted in some of the data that should have been considered by the workbook being excluded from the risk assessment, which would impact the final results and risk ratings calculated by the workbook.

3.82 The ANAO assessed the department's process for assessing compliance risk and selecting products for market surveillance in 2024–25 to determine if it is applying the Market Surveillance Selection Criteria. Of the seven Market Surveillance Selection Criteria:

- five (71 per cent) were used in the department's assessment of compliance risk for 2024–25;
- one (14 per cent) was partly used in the department's assessment of compliance risk for 2024–25; and
- one (14 per cent) was not used in the department's assessment of compliance risk for 2024–25.<sup>103</sup>

#### *Selection of suppliers for market surveillance*

3.83 The ANAO was not able to determine whether the assessment of compliance risk was used to inform the selection of market surveillance activities, as 2024–25 was the department's first year using this approach.

### **Risk-based approach to compliance monitoring activities**

3.84 The department's compliance monitoring activities for the GEMS program are not risk-based. It is not using the assessment of compliance risk it has produced to inform its selection of models for check testing. The department is not assessing compliance risk or monitoring compliance with GEMS level requirements, GEMS labelling requirements (as they relate to energy efficiency claims) and GEMS other requirements (performance requirements that may be specified in GEMS determinations) for one third of GEMS determinations.

3.85 Without a risk-based approach to inform the selection of products and models for check testing, the department cannot demonstrate that its check testing activities are focused on the areas where there is greatest risk of non-compliance. This limits the efficiency and effectiveness of the department's compliance monitoring activities.

#### **Recommendation no. 7**

3.86 The Department of Climate Change, Energy, the Environment and Water review its assessment of compliance risk and its selection of check testing and market surveillance activities to ensure that compliance activities are focused on the areas where there is the greatest risk of non-compliance by ensuring that:

- (a) all regulated products (those covered by a GEMS determination) are considered as part of its assessment of compliance risk;
- (b) calculations of compliance risk are accurate; and
- (c) the assessment of compliance risk is used to inform the selection of compliance activities.

**Department of Climate Change, Energy, the Environment and Water response: Agreed.**

3.87 *The Department will continue to build on its risk-based approach to inform the selection of products and models for check testing. The Department has recently developed a risk-based*

103 Due to rounding, the total of the percentages does not equal 100.

*workbook, which collates and analyses data and intelligence to identify, assess and prioritise product types and models for check test selections based on risk factors across all regulated products. To support the use of this workbook, the department has developed a Standard Operating Procedure which details the steps taken and data used to complete the selection workbook.*

*3.88 Noting that GEMS regulates a wide range of products, we have seen a reduction in Australian based testing laboratories over time, reducing access to local laboratories for some products. The GEMS program continues to assess overseas laboratories (including in New Zealand as a first preference) to ensure that check testing can continue to support and underpin compliance. To support this, a process for the procurement of an overseas laboratory has been included in the Standard Operating Procedure for the check testing selection workbook.*

*3.89 In respect to recommendation 7b, the Department has amended the Market Surveillance Selection Criteria to correct the formulas. These were minor errors which did not significantly impact the final risk rating results for market surveillance activities.*

## **Does the department take appropriate action to respond to identified non-compliance?**

The highest level of regulatory response issued or sought by the GEMS Regulator since the establishment of the program is an infringement notice. Four infringement notices have been issued, all of which were not paid and were not enforced by the GEMS Regulator. There is a risk that the GEMS Regulator may be seen as unable or unwilling to enforce the GEMS Act, which may limit the department's ability to effectively encourage compliance and deter non-compliance. The department is not documenting the assessment of the detriment that non-compliance may have caused. The quality and completeness of the department's records of its investigations of suspected non-compliance are limited by the lack of direct access to records prior to 2020 and issues impacting the quality of data in the department's register of investigations. The department has established processes for the internal review of reviewable decisions.

### **Investigating suspected non-compliance**

3.90 The Australian Government Investigation Standard (AGIS) states that:

An investigation can be broadly described as an activity to collect information or evidence to a particular standard of proof related to an alleged, apparent or suspected breach. An investigation gathers information across a broad spectrum to assist entities to determine a course of action, which may also be preventative and/or disruptive action instead of prosecutorial.<sup>104</sup>

3.91 The department had not established standard operating procedures or guidance regarding the process for investigating suspected non-compliance with the GEMS Act. Elements of the process for investigating suspected non-compliance were documented in a diagram and checklist. The diagram, titled the Referral and Case Management Process Diagram, and checklist, titled the

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104 Australian Government, *Australian Government Investigations Standard*, October 2022, available from <https://www.afp.gov.au/news-centre/publications/australian-government-investigations-standard#tab-1473> [accessed 24 January 2025], p. 1.

Enforcement Investigation Checklist, are undated and do not include information such as the context in which the document was developed, version history or record of approval. The diagram and checklist do not state whether all of the elements of the process outlined are required for every investigation or how elements prompting the investigator to 'consider' something should be documented.

3.92 In April 2025, the department established the GEMS Regulator Policy on Investigation Management and standard operating procedures for conducting an enforcement investigation and case management.

3.93 The AGIS outlines the educational qualifications needed to conduct investigations. It states that 'Entities **must** document the required VET accredited qualification/s (or equivalency) to conduct particular types of investigations and the timeframe in which investigators should obtain the qualification.'<sup>105</sup> It states that 'The Australian nationally recognised VET accredited qualifications to conduct investigations' are:

- Certificate IV in Government Investigations as set out in the Public Services Package (PSP) for persons/officers working in operational roles undertaking government entity investigation related functions (foundational)
- Diploma of Government Investigations as set out in the PSP for persons/officers engaged in the operational coordination and supervision of entity investigations in government related functions (supervisory)
- Advanced Diploma of Government Investigations as set out in the PSP for persons/officers working in operational coordination and supervision of multi-entity investigations in government related functions (extension supervisory).

3.94 The department had not documented the required VET accredited qualification/s (or equivalency) to conduct GEMS investigations or the timeframe in which investigators should obtain the qualification. Of the four officers involved in investigating non-compliance in the case records examined by the ANAO:

- two (50 per cent) have a Certificate IV in Government Investigations; and
- two (50 per cent) have completed Certificate IV or higher qualifications in investigation.

3.95 The GEMS Regulator Policy on Investigation Management states that 'The GEMS Regulator requires all investigative staff to have a Certificate IV in Government Investigations or equivalency.'

### *Records of investigations*

3.96 The AGIS states that 'Entities **should** have an electronic investigation management system (EIMS) to record, collate and manage investigations from report of allegation/information through to a BoE [Brief of Evidence] or other outcome actions (disruption), and finalisation (referral, closure, or prosecution).'

<sup>106</sup>

3.97 The department uses a spreadsheet to record its investigations of suspected non-compliance (enforcement management register). As at 16 October 2024, the earliest date

<sup>105</sup> Bold in original quote.

<sup>106</sup> Bold in original quote. Australian Government, *Australian Government Investigations Standard*, October 2022, p. 8, available from <https://www.afp.gov.au/news-centre/publications/australian-government-investigations-standard#tab-1473> [accessed 13 January 2025].

identified in the register is 9 May 2022 and the latest date is 18 September 2024. It documents 15 cases.

3.98 Data quality issues limit the reliability of the data recorded in the enforcement management register.

- The department has not documented instructions for the use of the enforcement management register or definitions of fields, codes and statuses used by the enforcement management register. It does not limit entries within the register to the use of specific codes and status. This increases the risk that fields, codes and statuses may be used incorrectly or inconsistently.
  - The department has documented a definition for the use of one of the 59 fields (two per cent) used by the enforcement management register.
- When inputting information into the register, staff are not documenting whether fields are not applicable or have not been completed. For the 15 cases documented in the enforcement management register, an average of 17.2 of the 59 fields per case contain data. The lowest number of fields filled is seven (two cases) and the highest is 31 (one case).
- The enforcement management register does not consistently record the date that activities relating to investigations occur. The register uses six fields that refer to dates: 'date of pre-referral advice requested' (documented for four cases); 'date referred/identified' (documented for eight cases); 'date inspected' (documented for two cases); 'date of contravention' (documented for two cases); 'date [enforcement investigation] commenced' (documented for five cases); and 'outcome date' (documented for three cases).
- The enforcement management register has not assigned the register's unique identifier (enforcement case number) to all cases documented in the enforcement management register. Of the 15 cases documented in the enforcement management register, six (40 per cent) have not been assigned an enforcement case number.

3.99 The department previously used a different spreadsheet to record its investigations of suspected non-compliance (historical contraventions register). This document is referred to in the enforcement management register. It was not easily accessible by the GEMS compliance team. Access to GEMS records prior to 2020 is examined in paragraphs 2.19 to 2.22.

3.100 The historical contraventions register contains 400 cases and covers the years from 2012 to 2020. The earliest 'commencement date' recorded for a case is 10 January 2012 and the latest is 29 July 2020. The latest dates listed (for purposes such as updates and notes) in the historical contraventions register (November 2020) and earliest dates in the enforcement management register (May 2022) indicate that there is a gap in the department's records of responses to potential non-compliance with the GEMS Act between approximately November 2020 and May 2022.

3.101 The 'fracturing' of the GEMS program's records and lack of direct access to records prior to 2020 (see paragraphs 2.19 to 2.22), combined with the issues impacting the quality of the data recorded in the enforcement management register, limits the quality and completeness of the department's records of its investigations of suspected non-compliance with the GEMS Act.

3.102 There is a risk that, without complete and accessible records, which have been maintained in accordance with the AGIS, the department may not be able to effectively utilise the regulatory tools available under the GEMS Act if investigations determine that the suspected non-compliance occurred.

### Recommendation no. 8

3.103 The Department of Climate Change, Energy, the Environment and Water review and improve its arrangements for recording investigations into suspected non-compliance with the GEMS Act to ensure its records are complete, accessible and maintained in accordance with the Australian Government Investigations Standard.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

*3.104 The department is committed to improving its recording of investigations into non-compliance in alignment with best practice regulatory approaches and the Australian Government Investigations Standard (AGIS). The department has recently updated its Enforcement Register to document instructions on use and completion of the register, included definitions of fields and a priority assessment tool used to determine priority rating of enforcement referrals and how to triage and prioritise referrals. In addition, the department has developed a GEMS Investigation Management Policy to provide an overview of when, why and how GEMS undertakes and manages investigations into non-compliance under the GEMS Act. To support implementation of this policy, the department has developed a Standard Operating Procedure to describe the process for conducting an enforcement investigation in response to alleged breaches of the GEMS Act. A new GEMS System will further support the Compliance and Enforcement function of GEMS.*

### *Monitoring and responding to patterns of non-compliance*

3.105 The department's arrangements for recording suspected and identified non-compliance do not support effective monitoring of patterns of non-compliance by regulated entities.

3.106 The check testing register does not include a field to identify the registrant of the model of GEMS product being tested. This limits the department's ability to effectively monitor and identify patterns of non-compliance by regulated entities. This is particularly important as a registrant may have registered large numbers of models of GEMS products under multiple brands and against multiple GEMS determinations.

3.107 The market surveillance compliance monitoring report data includes fields to document the name and (physical or online) address of the supplier inspected and, where applicable, its parent company.

### Regulatory responses

3.108 When presenting what would become the GEMS Act to the Australian Parliament, the Parliamentary Secretary for Climate Change and Energy Efficiency explained that the Act would 'establish a range of enforcement options' to 'allow the national regulator to issue infringement notices or ask businesses to compensate consumers for the costs of products that do not comply



with regulations’ and ‘For more serious breaches of the law [it] allows the courts to impose financial penalties’.<sup>107</sup>

3.109 The GEMS Act provides for a range of actions that the GEMS Regulator may take to enforce the GEMS Act, including:

- applying to a court for an injunction<sup>108</sup>;
- applying for the enforcement of civil penalty provisions by a court<sup>109</sup>;
- issuing an infringement notice<sup>110</sup>; and
- accepting an enforceable undertaking.<sup>111</sup>

3.110 The GEMS Act also provides for the GEMS Regulator to suspend<sup>112</sup> or cancel<sup>113</sup> a model’s registration and to publicise certain offences, contraventions and adverse decisions.<sup>114</sup>

3.111 The GEMS Compliance Policy was published on the Energy Rating website in November 2018.<sup>115</sup> It ‘outlines the principles adopted by the GEMS Regulator to maximise compliance’ with the GEMS Act (see paragraphs 2.98 to 2.105). The department has established a Compliance and Enforcement Guide, which outlines the department’s approach to responding to

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107 Australian Parliament, *Greenhouse and Energy Minimum Standards Bill 2012, Second Reading Speech*, House of Representatives, Wednesday 30 May 2012, The Hon Mark Dreyfus KC, MP, Parliamentary Secretary for Climate Change and Energy Efficiency, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F4a17e30d-c43b-48b9-83ed-4280fc00314c%2F0045%22> [accessed 11 November 2024].

108 If a person has engaged, is engaging or is proposing to engage, in conduct in contravention of an offence or a civil penalty provision of Part 3 or 5 of the GEMS Act, a relevant court may grant an injunction, on application by the GEMS Regulator, to restrain the person from engaging in the conduct or require the person to do a thing. See section 132 of the *Greenhouse and Energy Minimum Standards Act 2012* and section 121 of the *Regulatory Powers (Standard Provisions) Act 2014*.

109 The GEMS Regulator may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty. If the court is satisfied that the person has contravened the civil penalty provision, it may order the person to pay up to the pecuniary penalty specified for the civil penalty provision or up to five times the pecuniary penalty specified for the civil penalty provision (if the person is a body corporate). See section 129 of the *Greenhouse and Energy Minimum Standards Act 2012* and section 82 of the *Regulatory Powers (Standard Provisions) Act 2014*.

110 An infringement notice may be for the amount of the lesser of one-fifth of the maximum penalty that a court could impose on the person for the contravention of the relevant civil penalty provision of the GEMS Act or 12 penalty units (for an individual person) and 60 penalty units (for a body corporate). See section 130 of the *Greenhouse and Energy Minimum Standards Act 2012* and Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014*.

111 An enforceable undertaking may comprise a written undertaking given by a person that the person will, in order to comply with an offence or civil penalty provision of the GEMS Act take specified action, refrain from taking specified action or take specified action directed towards ensuring that the person does not contravene a provision or is unlikely to do so in the future. See section 131 of the *Greenhouse and Energy Minimum Standards Act 2012* and section 114 of the *Regulatory Powers (Standard Provisions) Act 2014*. The GEMS Regulator may also accept a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention by the person, pay another person an amount worked out in accordance with the undertaking. See subsection 131(4) of the *Greenhouse and Energy Minimum Standards Act 2012*.

112 *Greenhouse and Energy Minimum Standards Act 2012*, section 49.

113 *ibid.*, section 54.

114 *ibid.*, section 162.

115 Australian Government, Energy Rating, *GEMS Compliance Policy*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-compliance-policy> [accessed 11 January 2025].

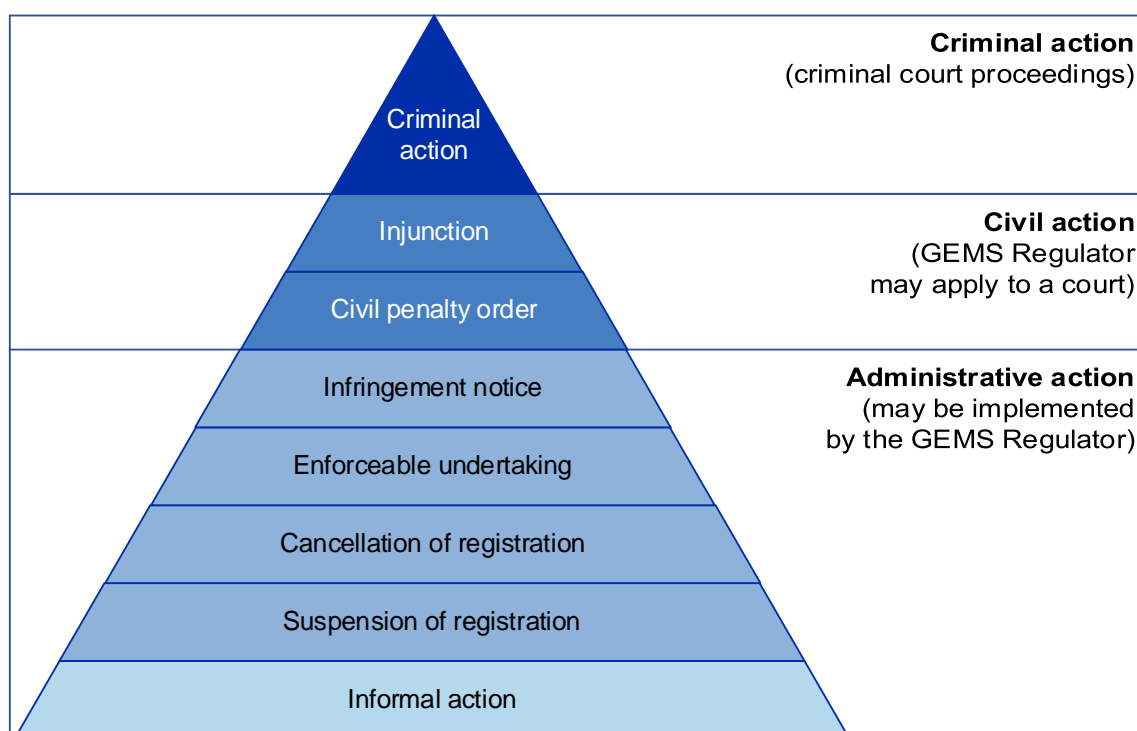


non-compliance with the GEMS Act. It was created in August 2022 and most recently reviewed in July 2024.

3.112 The Compliance and Enforcement Guide states that ‘Our compliance objective is to maximise the number of regulated entities who choose to comply voluntarily with the GEMS Act ... whilst implementing strategies and responses to identify, and then deter, non-compliance’. It includes an enforcement pyramid that illustrates the hierarchy of available responses (Figure 3.3) and states that:

Graduated and risk-based responses allow the GEMS Regulator ... to either escalate action if a regulated entity does not respond appropriately to the initial regulatory action or reward an entity for improved performance by moving down the hierarchy.

**Figure 3.3: GEMS enforcement pyramid**



Source: Adapted from Compliance and Enforcement Guide.

3.113 The Compliance and Enforcement Guide states that ‘informal action involves discussion, persuasion and targeted advice, provided verbally or in written form’ and that ‘it is primarily intended to raise awareness of the obligations of a regulated entity and motivate them to implement procedures to ensure compliance’. It explains that informal action may include letters of warning, which ‘warn a regulated entity about their responsibilities and highlight the possible penalties of not meeting these’.

3.114 The Compliance and Enforcement Guide states that ‘As a general principle, informal and administrative action will be used in response to first, and less serious, contraventions’. It explains that ‘This ensures that parties that have contravened the GEMS Act are made aware of their legislative obligations and provided with guidance to assist them in meeting these obligations in the future.’

3.115 The department has established standard operating procedures outlining the processes for issuing infringement notices; accepting and enforcing enforceable undertakings; cancelling a registration; and suspending a registration.

## Responding to non-compliance

3.116 The ‘fracturing’ of the GEMS program’s records and lack of direct access to records prior to 2020 (see paragraphs 2.19 to 2.22), combined with the issues impacting the quality of the data recorded in its compliance monitoring records (see paragraphs 3.23 to 3.31) and in its records of investigations (see paragraphs 3.96 to 3.102), limits the quality and completeness of the department’s records and corporate knowledge of its uses of regulatory responses to non-compliance with the GEMS Act.

3.117 For example, in October 2024, the department advised the ANAO that ‘to [their] knowledge’ the GEMS Regulator has never issued an infringement notice. In February 2025, the department subsequently<sup>116</sup> advised the ANAO that it had identified that four infringement notices were issued in September 2018 (see case study 2).

3.118 Table 3.3 lists the regulatory responses that have been used between 2019–20 and 2023–24. The table is informed by the department’s advice to the ANAO and departmental reporting.

**Table 3.3: Use of regulatory responses, 2019–20 to 2023–24**

Regulatory response	Number of times	ANAO comments
Applied for the enforcement of civil penalty provisions by a court	0	In October 2024, the department advised the ANAO that ‘to [their] knowledge’ the GEMS Regulator has never sought to prosecute or bring court proceedings against a regulated entity for a contravention of the GEMS Act.
Applied to a court for an injunction	0	In October 2024, the department advised the ANAO that ‘to [their] knowledge’ the GEMS Regulator has never sought to prosecute or bring court proceedings against a regulated entity for a contravention of the GEMS Act.
Issued an infringement notice	4 <sup>a</sup>	Details of the case in which the four infringement notices were issued is outlined in case study 2.
Accepted an enforceable undertaking	4	In October 2024, the department advised the ANAO that ‘it appears that [there] has been four Enforceable Undertakings since 2020’.  The four enforceable undertakings were signed by the GEMS Regulator and a representative of the relevant company between August and November 2020.

<sup>116</sup> In September 2024, the audit team requested a copy of the historical contraventions register (see paragraphs 3.99 to 3.100), which the GEMS compliance team did not have direct access to. In December 2024, the department provided a copy of the historical contraventions register to the ANAO. In February 2025, the department identified that infringement notices had been issued in September 2018.

Regulatory response	Number of times	ANAO comments
Cancelled a model's registration	33 <sup>b</sup>	Check testing results reporting indicates <sup>b</sup> that the GEMS Regulator cancelled 33 registrations between 2019–20 to 2023–24.

Note a: Case was included in the table, as the investigation was ongoing from 2017–18 to 2020–21.

Note b: Due to the data quality issues regarding the data recorded in the check testing register (see paragraphs 3.23 to 3.31), the ANAO was unable to verify the accuracy of the data reported in the check testing results.

Source: ANAO analysis of departmental records and advice.

3.119 The check testing results reporting indicates<sup>117</sup> that the GEMS Regulator cancelled 33 registrations between 2019–20 to 2023–24. Of the 33 cancellations, two (one in 2020–21 and the one in 2021–22) were not stated to have been at the request of the registrant. Of the 33 cancellations, 20 (61 per cent) were reported in financial year 2019–20.

### Case studies

3.120 Case study 1 and case study 2 provide examples of the department's response to repeated or ongoing non-compliance.

#### Case study 1. Example of response to repeated non-compliance

In May 2023, the department<sup>a</sup> received an allegation that Company A was offering to supply models of GEMS products that were not registered. The department investigated the allegation, finding that Company A was offering to supply 10 models of GEMS products that were not registered, in contravention of section 17 of the GEMS Act.

The investigation report, dated August 2023, briefed the GEMS Regulator on Company A's history of high risk compliance behaviours including:

- allegations and identification (through market surveillance) that Company A was offering to supply models of GEMS products that were not registered (in 2013, 2014, and 2016);
- evidence Company A imported<sup>b</sup> GEMS products that were not registered (in 2013; 2014, and 2016);
- Company A's resistance to its products being check tested (in 2015 and 2019);
- the department's compliance monitoring finding that models registered by Company A do not meet GEMS level requirements<sup>c</sup> (in 2015 and 2019);
- evidence Company A continued to import<sup>b</sup> models after that model's registration had been cancelled (2016); and
- evidence that Company A was supplying models of GEMS products after that model's registration had been cancelled (2017).

The investigation report advised that the department 'has made previous attempts to educate [Company A] on GEMS registration requirements' and that 'These attempts have failed'.

<sup>117</sup> Due to the data quality issues limiting the reliability of the data recorded in the check testing register, the ANAO was unable to verify the accuracy of the check testing data reported in the check testing results.

The investigation report recommended the GEMS Regulator respond to the contravention by educating Company A on GEMS requirements, stating that ‘a directive approach to [Company A] through a warning letter is warranted to advise them of their GEMS obligations and consequences if voluntary compliance is not achieved’. The investigation report stated that the recommended action was consistent with the GEMS Compliance Policy.

In September 2023, a warning letter was sent to Company A advising that if Company A did not return to compliance, formal enforcement action may be taken. In December 2023, a letter was sent to Company A advising that ‘GEMS Compliance monitoring activities have confirmed the unregistered GEMS products identified ... are no longer offered for supply on your Website’ and that ‘no further compliance action will be taken at this time’.

Note a: This case study uses ‘the department’ to refer to the department responsible for administering the GEMS Act at the time.

Note b: The GEMS Act regulates the supply, offer to supply and use for a commercial purpose of GEMS products. The import of products is not regulated by the GEMS Act. Evidence of the import of GEMS products may indicate a risk that an entity intends to supply, offer to supply or use GEMS products for a commercial purpose.

Note c: In 2015, Company A elected to cancel the registration. In 2019, the GEMS Regulator cancelled the registration.

3.121 Company A’s history of high risk compliance behaviours and the department’s conclusion that its previous attempts to educate Company A ‘had failed’ indicate that there is a significant risk that education and informal action may not be effective in encouraging voluntary compliance or deterring non-compliance in the future.

## Case study 2. Infringement notices

In August 2017, the department<sup>a</sup> received an allegation that Company B may not be complying with the requirements of the GEMS Act. The department investigated the allegation, finding that Company B was offering to supply seven models of GEMS products that were not registered, in contravention of section 17 of the GEMS Act.

Between August 2017 and May 2018, the department repeatedly attempted to assist Company B to comply with its obligations under the GEMS Act. Company B continued offering to supply unregistered GEMS products. In July 2018, the department inspected Company B’s premises, identifying and photographing four unregistered GEMS products being offered for sale.

In September 2018, four infringement notices were issued to Company B for the four unregistered GEMS products being offered for sale at its premises. The penalty payable under each notice was \$12,600 (totalling \$50,400). Each infringement notice advised that the ‘maximum penalty a court could impose for this contravention is \$63,000’ (totalling \$252,000). Company B advised the department that it did not intend to pay the infringement notice penalties.

In October 2018, the specified due date for the infringement notices passed without the infringement notices being paid. In October and November 2018, the department sought internal legal advice and, in March 2019, the department received external legal advice on its prospects of obtaining a civil penalty order against Company B.

Between May 2019 and August 2020, the department continued to collect evidence showing that Company B was offering to supply unregistered GEMS products.

In August 2020, the GEMS Regulator<sup>b</sup> agreed that ‘a civil penalty order is the next most appropriate enforcement response’. In September 2020, the department received a quote for external legal services to commence civil proceedings against Company B.

In November 2020, a proposal to commence civil proceedings against Company B was submitted to the GEMS Regulator for approval. The proposal stated that it ‘regards this enforcement action as an important compliance tool in situations where there is evidence of a breach of the GEMS Act’ and that it ‘recommends enforcement action by way of application to a court for a civil penalty order’.

In January 2021, the department advised its internal legal team that the GEMS Regulator had decided not to pursue a civil penalty order in relation to these contraventions. Instead the GEMS Regulator proposed to ‘gather new evidence of [Company B]’s ongoing contraventions of the GEMS Act’ and subsequently issue Company B a formal warning letter. There is no record of the GEMS Regulator’s decision or of a formal warning letter being issued to Company B. There is no evidence that Company B’s contraventions of the GEMS Act ceased.

Note a: This case study uses ‘the department’ to refer to the department responsible for administering the GEMS Act at the time.

Note b: During this case, the officer in the role of GEMS Regulator changed in November 2018, April 2019, September 2019, February 2020, June 2020, and December 2020. In February 2020, the department responsible for administering the GEMS Act changed from the Department of Environment and Energy to the Department of Industry Science Energy and Resources.

3.122 Company B’s high risk compliance behaviours and refusal to pay the four infringement notices it was issued demonstrate that education and informal action had not been and would not be effective in encouraging voluntary compliance or deterring non-compliance.

### *Managing the impact of non-compliance*

3.123 Non-compliance negatively impacts consumers who have purchased a product that does not meet GEMS requirements. The Compliance and Enforcement Guide provides an enforcement evaluation criteria table to assist in the assessment of detriment caused, the seriousness of the conduct and the impact on the public interest.

3.124 The department is not documenting the assessment of the detriment that non-compliance may have caused. For example, the financial impact to consumers that may have purchased and been using products that do not comply with the GEMS level requirements or that may have been sold under an inaccurate energy efficiency label. This limits the department’s ability to effectively determine the seriousness of each case of non-compliance and apply an appropriate enforcement response that is commensurate with the potential detriment caused.

3.125 In case study 1, the highest regulatory response the GEMS Regulator used to respond to non-compliance was to cancel a registration. This level of response may not disincentivise regulated entities that are likely to demonstrate opportunistic or intentionally non-compliant behaviour from registering and supplying products that do not meet GEMS requirements. A non-compliant entity may still have profited from the sale of GEMS products it was never permitted to sell for the period the non-compliance went undetected (and beyond, if it continues to supply the cancelled product).

3.126 In case study 2, by choosing not to enforce the infringement notices it had issued to Company B, the GEMS Regulator demonstrated to Company B and other regulated entities that there is no penalty or consequence for non-compliance. There is a risk that this may increase the

likelihood that regulated entities demonstrate opportunistic or intentionally non-compliant behaviour.

3.127 There is a risk that the GEMS Regulator may be seen as unable or unwilling to utilise the full suite of regulatory tools provided by the GEMS Act to enforce compliance. This may limit the department's ability to effectively encourage compliance, deter non-compliance and achieve the outcomes of the GEMS scheme.

### Appeal and review of decisions

3.128 The GEMS Act provides for a person affected by a reviewable decision<sup>118</sup> to apply for the decision to be reviewed. Section 166 of the GEMS Act provides for a person affected by a reviewable decision made by someone other than the GEMS Regulator, to be reviewed internally by the GEMS Regulator. Section 167 of the GEMS Act provides for a person affected by a reviewable decision made by the GEMS Regulator (including an internal review decision made by the GEMS Regulator), to apply for it to be reviewed by the Administrative Appeals Tribunal (AAT).

3.129 The department has established standard operating procedures outlining the process for the internal review of reviewable decisions. In October 2024, the department advised the ANAO that the GEMS Regulator has not received a request for internal review to date.

3.130 In June 2022, the AAT reviewed the GEMS Regulator's decision to cancel a registration in December 2020. The AAT affirmed the GEMS Regulator's decision.<sup>119</sup>

### Does the department appropriately review and report on the program's performance?

The GEMS Act has been independently reviewed, as required under the GEMS Act. In 2023, the GEMS program was internally audited. The department conducts annual surveys to measure stakeholder satisfaction. The department prepares annual reports on the operation of the GEMS Act. Reporting on the program's operation and performance could not be verified against departmental records. The department is not measuring and reporting on the program's impact on reducing energy consumption and carbon emissions.

3.131 RMG 128: Regulator Performance states that best practice regulators 'undertake regular and independent performance reviews and take ownership of and respond to recommendations of external reviews of their performance such as those conducted by the Australian National Audit Office'.<sup>120</sup>

118 See section 164 of the GEMS Act for a list of reviewable decisions and persons affected.

119 Pioneer International Pty Ltd and Greenhouse and Energy Minimum Standards Regulator [2022] AATA 1587.

120 Department of Finance, *RMG 128 Regulator Performance, Principle 1: Continuous improvement and building trust*, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/regulator-performance-rmg-128/principle-1-continuous-improvement-and-building-trust> [accessed 21 January 2025].



## Monitoring and evaluating performance

### *Independent review of effective operation of GEMS Act*

3.132 Section 176 of the GEMS Act requires that the Minister arrange for an independent review of the operation of the GEMS Act be undertaken five years after the commencement of the Act and every 10 years after that. The Minister appointed an independent reviewer<sup>121</sup> to undertake the review in 2017, which published its final report in June 2019.<sup>122</sup>

3.133 The report made 40 recommendations. As at February 2025, the Australian Government has not published a response to the review's recommendations. In February 2025, the department advised the ANAO that 'On 19 July 2024, Energy Ministers agreed that the department will work with the E3 Steering Committee to ensure that its work plan is aligned with broader energy and emissions reduction priorities across jurisdictions through the development of the E3 Strategic Plan and Workplan, to continue addressing recommendations from the review.'

### *Internal audit of governance arrangements for GEMS Act*

3.134 In September 2023, the final report for the internal audit into *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* (which had been completed in August 2023) was presented to the department's Audit and Risk Committee. The objective of the internal audit was:

to assess the design effectiveness of the governance arrangements in place for the GEMS Regulator to support delivery of the GEMS Act, with reference to the best practice principles set out in the Department of Finance's Resource Management Guide 128 on Regulator Performance (RMG 128).



3.135 The internal audit made three medium-risk findings and four recommendations (Table 3.4). All four recommendations were accepted by the department.

**Table 3.4: Implementation of 2023 internal audit recommendations**

Recommendation	Implementation status	ANAO comments
The Regulator should complete and publish a Cost Recovery Impact Statement (CRIS) as soon as practicable noting that a draft is currently in process. <b>Management response:</b> Agree <b>Implementation due:</b> December 2023	◆	The GEMS CRIS was published in April 2024. <sup>a</sup>
The Regulator should conduct a review of the GEMS fees to ensure it is avoiding or reducing unnecessary costs for stakeholders. <b>Management response:</b> Agree <b>Implementation due:</b> 30 June 2025	▲	In February 2025, the department advised the ANAO that the 'fees review will commence once the 2024-25 CRIS has been completed'.


121 The then Minister for the Environment and Energy, the Hon Josh Frydenberg MP, appointed Ms Anna Collyer, a partner at law firm Allens, to undertake the review.

122 Australian Government, Energy Rating, *GEMS Act: 2017 Review*, available from <https://www.energyrating.gov.au/industry-information/publications/gems-act-2017-review> [accessed 21 January 2025].

Recommendation	Implementation status	ANAO comments
The Regulator should work towards including a Corporate Plan performance measure that relates to the effectiveness of the GEMS Program in terms of carbon abatement and energy saving. <b>Management response:</b> Agree <b>Implementation due:</b> 1 July 2025		In February 2025, the department advised the ANAO that 'Since the internal audit recommendation, the department has been investigating options to implement a performance measure that goes to the effectiveness of the program in reducing energy consumption and greenhouse gas emissions'.
The Regulator should describe and document how it uses data and intelligence to inform its approaches to market surveillance in relevant SOPs. <b>Management response:</b> Agree <b>Implementation due:</b> December 2023		The department has established documentation of its approach to assessing compliance risk to inform its selection of products, models, brands, and suppliers for market surveillance activities.

Key:  Recommendation has been implemented.

 Recommendation has not been implemented and due date has not passed.

 Recommendation has not been implemented and due date has passed.

Note a: Australian Government, Energy Rating, *Cost Recovery Implementation Statement GEMS 2022-2023*, available from <https://www.energyrating.gov.au/industry-information/publications/publications/cost-recovery-implementation-statement-gems-2022-2023> [accessed 21 January 2025].

Source: ANAO analysis.

### *Stakeholder satisfaction surveys*

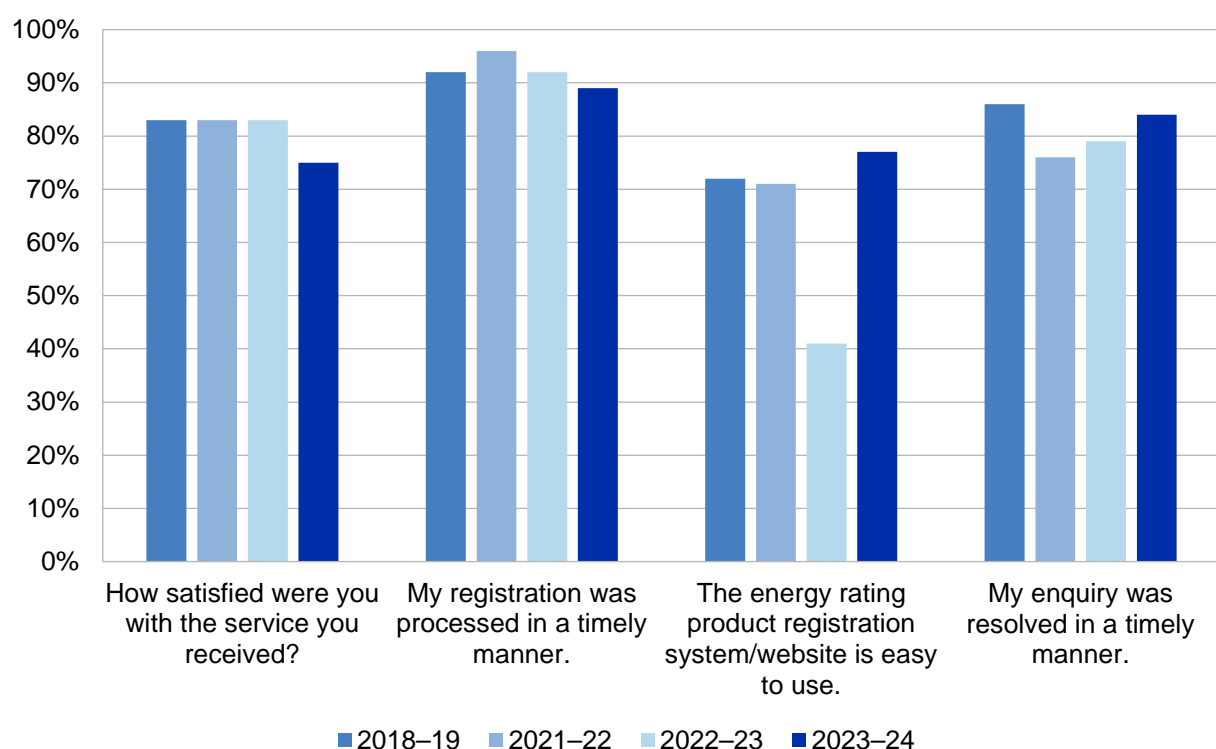
3.136 The department conducted surveys to measure stakeholder satisfaction (stakeholder satisfaction surveys) in 2017–18, 2018–19, 2021–22, 2022–23 and 2023–24. The results of the surveys are published on the Energy Rating website.<sup>123</sup> The 2021–22 survey results stated that the survey 'followed a two-year break due to [the COVID-19 pandemic]'.

3.137 The published results report on the survey response rate<sup>124</sup>, key findings and changes compared to the previous survey. Narrative explanations are supplemented by graphical representations of some results. The questions are largely focused on stakeholder's experiences registering products and submitting enquiries. An example of the results for four of the questions that were consistently asked across the most recent four surveys is illustrated at Figure 3.4.

123 Australian Government, Energy Rating, *GEMS Stakeholder Satisfaction Surveys*, available from [https://www.energyrating.gov.au/industry-information/publications?combine=stakeholder+survey&field\\_category\\_target\\_id=All&field\\_product\\_target\\_id=All&field\\_publication\\_type\\_target\\_id=All&year=all](https://www.energyrating.gov.au/industry-information/publications?combine=stakeholder+survey&field_category_target_id=All&field_product_target_id=All&field_publication_type_target_id=All&year=all) [accessed 21 January 2025].

124 Survey response rates were largely consistent over the period. The surveys were sent to between 791 and 1,303 (with an average of 917) registrants and contacts who had emailed the energy rating team over the year. The surveys had a response rate between 14 and 24 per cent (with an average of 19 per cent).



**Figure 3.4: Stakeholder satisfaction survey results, 2018–19 to 2023–24**

Source: ANAO summary of stakeholder satisfaction surveys.

3.138 The results across these four questions are largely consistent, with the exception of the drop in reported ease of use of the energy rating product registration system in 2022–23.

3.139 In May 2025, the department advised the ANAO that ‘examination of free text comments from the Stakeholder Survey conducted for 2022–23 identified a high level of dissatisfaction with the account keeping requirements for the registration system introduced in September 2021’. It explained that the department ‘responded to this feedback and introduced simplified requirements, better aligning the account keeping requirements to those in the Government’s Information Security Manual’.

## Reporting on performance

### *GEMS annual report*

3.140 Section 175 of the GEMS Act states that the ‘GEMS Regulator must prepare and give to the Minister a report on the operation of this Act during each financial year’ and that it must be done ‘as soon as practicable after the end of each financial year’. It also requires the Minister to table the report in Parliament and give a copy of the report to each participating jurisdiction. The GEMS Act does not specify what information should be included in the report.

3.141 Annual reports of the relevant department<sup>125</sup> include a section on the operation of the GEMS Act as well as statistics and information about the activities conducted by the program (Table 3.5).

**Table 3.5: Statistical information included in GEMS annual reports**

Report year		2019–20	2020–21	2021–22	2022–23	2023–24
Determinations in force		22	23	22	24	24
Applications approved		5,371	7,086	5,830	4,813	5,256
Enquiries responded to		974	1205	Not reported	Not reported	Not reported
Avg. time to approve applications		1.2 days	1.4 days	2.4 days	2.5 days	1.8 days
Exemption requests granted		2	4	5	2	1
Revenue from registration fees		\$2.72 million	\$3.83 million	\$3.30 million	\$2.66 million	\$2.98 million
Check tests completed	Total	130 models	80 models	61 models	62 models	63 models
	Compliant	96	74	37	27	38
	Not compliant	34	6	7 pending test finalisation, 17 potentially failed	28 pending test finalisation, 7 potentially failed	24 pending test finalisation, 1 failed
Market surveillance	Stores visited	Not reported	Not reported	Not reported	160	159 physical stores 77 online retailers
	Registration compliance	96%	97% (household products), 70% (industrial products)	94% (household products), 74% (industrial products)	97% (in store, household products), 92% (online, household products)	97% (in store, household products) 84% (online)
	Labelling compliance	94%	Not reported	71%	84% (in store)	91% (in store)

Source: GEMS Annual Reports, as published in departmental annual reports.

3.142 In addition to the above statistical information, the annual reports included:

- a summary of consultation and stakeholder engagement activities;
- information on the impact of the COVID-19 pandemic; and

<sup>125</sup> The former Department of Industry Science Energy and Resources for 2019–20 to 2021–22 and the Department of Climate Change, Energy, the Environment and Water for 2022–23 and 2023–24.

- responses to the independent review of effective operation of GEMS Act (2019–20, 2020–21, and 2023–24).

3.143 The revenue from fees reported in the GEMS annual reports does not align with the revenue from fees reported in the department's annual financial statements (Table 3.6).

**Table 3.6: Comparison of revenue from fees as reported in GEMS annual reports and as reported in the department's<sup>a</sup> annual financial statements, 2019–20 to 2023–24**

Financial year	Reported in annual report \$ m	Reported in annual financial statements \$ m	Difference between reported figures \$ m
2019–20	2.719	2.879	0.160
2020–21	3.834	4.039	0.205
2021–22	3.301	3.312	0.010
2022–23	2.660	3.073	0.413
2023–24	2.977	2.974	0.003

Note a: This table uses 'the department' to refer to the department(s) responsible for administering the GEMS Act at the time.

Source: ANAO analysis.

3.144 In May 2025, the department advised the ANAO that 'Reported outcomes are compiled by different parts of the agency, which has resulted in the use of inconsistent source data and different recognition of transactions within and across the source data'.

3.145 The quality and completeness of the department's records of the GEMS program are limited by the lack of direct access to records prior to 2020 (see paragraphs 2.19 to 2.22) and issues impacting the quality of data in its registers of compliance monitoring activities (see paragraphs 3.23 to 3.31) and investigations (see paragraphs 3.96 to 3.102) as well as the lack of effective controls in the GEMS Registration system (see paragraphs 2.80 to 2.90). Reporting on the program's operation and performance could not be verified against departmental records.

3.146 The market surveillance results and the annual reports include reporting on market surveillance compliance rates. In 2023–24, the GEMS annual report stated that:

From the 159 physical stores visited during 2023–24:

- 97% of GEMS household products were correctly registered under GEMS
- 91% correctly displayed an energy rating label (ERL), while 9% presented with an obscured or missing ERL or displayed an incorrect ERL.

Online store monitoring of 77 retailers, suppliers and third-party online shopping websites revealed:

- 84% of GEMS products were correctly registered under GEMS; industrial products returned the higher non-compliance online during this period.

It should be noted that display of the ERL is currently exempt for online product sales or offers to supply.

3.147 The ANAO was unable to verify the market surveillance compliance rates reported in the GEMS annual reports. In addition to the issues regarding the quality of the department’s records, the department does not record the total number of GEMS products offered for supply by the store or online retailer or the total number of correctly registered or labelled products for all inspections.<sup>126</sup> Without this data, the department cannot accurately calculate the compliance rates as reported in the annual reports.

3.148 In October 2024, the department advised the ANAO that annual reports are not provided to state governments. The annual reports are publicly available online.

*Annual performance measure*

3.149 RMG 128 states that ‘Regulators should embed methodologies to understand the costs, impact and outcomes of regulation and collect evidence of this at a system-wide level, using insights to support and drive improved outcomes.’ The purpose of the GEMS Act is to prevent the sale of the most inefficient products in the Australian market and to help inform Australian consumers about the energy efficiency of products when making decisions about which products to purchase.<sup>127</sup> The program aims to:

- reduce energy consumption, and associated greenhouse gas emissions and energy costs, of Australian households and businesses; and
- incentivise manufacturers to innovate and produce more energy efficient products.<sup>128</sup>

3.150 The department has established one performance measure related to the GEMS program, which has been used consistently since 2021–22 (Table 3.7).

**Table 3.7: Performance measures related to GEMS program**

Year	Performance measure	Target %	Actual %
2021–22 <sup>a</sup>	Proportion of GEMS registration applications processed by the GEMS Regulator within 14 days from the time of application	99	99.0

126 In February 2025, the department advised the ANAO that the scope of an inspection is determined by compliance risk. The scope of inspections comprise:

- ‘By exception’: where GEMS Inspectors will ‘collect all products missing an [Energy Rating Label (ERL)], have an obscured ERL, damaged ERL, old ERL, items on sale, brand new items, random selection of additional products’;
- ‘Full capture’: where GEMS Inspectors will prepare ‘a full record of all products being offered for supply including labelling and/or marking requirements’; and
- ‘Public view’: where GEMS Inspectors ‘may be requested to simply enter premises and observe if store has returned to compliance, no photos would be taken, just notes of visit’.

127 Australian Parliament, *Greenhouse and Energy Minimum Standards Bill 2012, Second Reading Speech*, House of Representatives, Wednesday 30 May 2012, The Hon Mark Dreyfus KC, MP, Parliamentary Secretary for Climate Change and Energy Efficiency, available from <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F4a17e30d-c43b-48b9-83ed-4280fc00314c%2F0045%22> [accessed 11 November 2024].

128 *ibid.*  
*Inter-Governmental Agreement for Greenhouse and Energy Minimum Standards (GEMS) Legislative Scheme*, September 2012, available from <https://www.energyrating.gov.au/industry-information/publications/inter-governmental-agreement-greenhouse-and-energy-minimum-standards-gems-legislative-scheme-original> [accessed 19 November 2024], pp. 4–5.

Year	Performance measure	Target %	Actual %
2022–23	Proportion of GEMS registration applications processed by the GEMS Regulator within 14 days from the time of application	99	99.5
2023–24	Proportion of Greenhouse and Energy Minimum Standards (GEMS) registration applications processed by the GEMS Regulator within 14 days from the time of application	99	99.9
2024–25	Proportion of Greenhouse and Energy Minimum Standards (GEMS) registration applications processed by the GEMS Regulator within 14 days from the time of application	99	Not yet available

Note a: Department of Industry, Science, Energy and Resources (DISER). Prior to 2021–22, DISER's annual reports did not include any performance measures related to the GEMS program.

Source: ANAO analysis.

3.151 The department's approach to measuring and reporting on the performance of the GEMS Regulator largely focuses on reporting on the number of activities completed (e.g. number of registrations processed; average time taken to process applications; number of check tests; number of stores inspected; etc.).

#### *GEMS data model*

3.152 In February 2023, the department concluded its GEMS data modelling project, which aimed to 'provide technical advice to support the Department's development and implementation of data sourcing and modelling, in order to capture past trends and predict future trends relating to the Greenhouse Energy Minimum Standards (GEMS), appliance energy efficiency, and associated carbon emissions reductions'.

3.153 In September 2023, an internal audit found that 'While there is a performance measure relating to GEMS regulatory activities in the Department's Corporate Plan, there are no measures for the effectiveness of the GEMS program.' It explained that 'Without updated performance measures for the Department's Corporate Plan, the Regulator may not have sufficient transparency and accountability of its performance in relation to the impact of its activities.'

3.154 The internal audit recommended that 'The Regulator should work towards including a Corporate Plan performance measure that relates to the effectiveness of the GEMS program in terms of carbon abatement and energy saving.' The department agreed with the recommendation, stating that:

The GEMS Regulator acknowledges that a performance measure that targets annual abatement from the program would be a more suitable performance measure. Work to confirm the methodology of an abatement measure was completed in 2022-23, however further work is required to identify an ongoing source of sales data before being able to move to this measure.

This work is expected to be completed and incorporated as the performance measure in the 2025-26 Corporate Plan.

3.155 In August 2024, the DCCEE internal audit team was advised that 'work is on track to meet the target due date [1 July 2025]'.

3.156 In February 2025, the department advised the ANAO that 'Since the internal audit recommendation, the department has been investigating options to implement a performance measure that goes to the effectiveness of the program in reducing energy consumption and greenhouse gas emissions'. The department explained that:

In the department's investigations, there have been a number of not insignificant issues that would need to be addressed in order for a more meaningful performance measure to be committed to on an ongoing basis. These have cost and potentially legislative implications and are yet to be thoroughly worked through.

3.157 Without a useable evidence-based methodology and access to the necessary data inputs for measuring the program's impact on its intended outcomes, the department cannot demonstrate whether the program is achieving its intended purpose. This also limits transparency and accountability regarding the effective administration of the program.

### Recommendation no. 9

3.158 The Department of Climate Change, Energy, the Environment and Water develop performance measure(s) that provide meaningful information on the effectiveness of the program in achieving its outcomes.

**Department of Climate Change, Energy, the Environment and Water response:** *Agreed.*

3.159 *The department agrees that strengthened performance measures for the program are important and would assist in demonstrating the outcomes and benefits of the GEMS Program. The department also acknowledges the complexity of developing performance measures that are meaningful, repeatable and do not themselves impose significant costs on the system.*

3.160 *The nature of the GEMS regulation is to establish Minimum Energy Performance Standards (MEPS) that provide a baseline for in-scope, compliant and non-compliant products and equipment. Products regulated include appliances (such as clothes driers), equipment used in the distribution of energy (such as distribution transformers) and smaller products used by households (such as lighting technologies). This variety means that data collection is at various scales and spread across several markets. The costs associated with data collection and analysis can be large compared to the cost of the product subject to regulation. Analysing this information is also premised on the number of products registered in each group and within any given year, which is market-driven and uncertain.*

3.161 *The department is working with the E3 partners (Australian states and territories and New Zealand) on a strategic plan for the program. One of the elements of that plan is to enhance how outcomes are described, measured and reported. Work commenced on the strategic plan in 2024-25 and will be progressed to the Energy and Climate Change Ministerial Council when finalised in late 2025.*



Dr Caralee McLiesh PSM  
Auditor-General

Canberra ACT  
5 June 2025

# Appendices



## Appendix 1 Entity response



Australian Government

Department of Climate Change, Energy,  
the Environment and Water

David Fredericks PSM  
Secretary

Our ref: EC25-001225

Dr Caralee McLiesh PSM  
Auditor-General  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Email: [OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au](mailto:OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au)

Dear Dr McLiesh

Thank you for your correspondence of 10 April 2025 and the opportunity to respond to the Australian National Audit Office's (ANAO's) proposed report on *Administration of the Equipment Energy Efficiency Program (GEMS)*.

As always, I am very grateful to you and your officers for the proactive and constructive manner in which my staff were engaged throughout the preparation of this report.

Pursuant to section 19 of the *Auditor-General Act 1997*, the Department of Climate Change, Energy, the Environment and Water (the department) has prepared a response to the report.

The department agrees with all nine of the audit's recommendations and is well-advanced in implementing changes to strengthen its regulatory approach under the GEMS Act.

Actions that the department has already put in place include revised Standard Operating Procedures for key program activities and more robust policies for implementing compliance functions. The GEMS program now has a centralised register of GEMS Inspectors' qualifications and experience and the GEMS Regulator is satisfied that all GEMS Inspectors are appropriately qualified. The department has responded to observations during the audit process to ensure appropriate segregation of duties in IT systems. The department is considering a proposal to replace and update the GEMS registration system. This would assist in addressing several recommendations in the report and enhance the program's effectiveness and efficiency, strengthening the GEMS program.

Please find enclosed with this letter the Department's Summary Response: Response to the Proposed Recommendations (Appendix A).

Thank you again for your strong and helpful assistance in these matters.

Yours sincerely

David Fredericks

May 2025

[DCCEEW.gov.au](http://DCCEEW.gov.au)

John Gorton Building, King Edward Terrace, Parkes ACT 2600 Australia  
GPO Box 3090 Canberra ACT 2601 ABN: 63 573 932 849



## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.
2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's corporate plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.
3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:
  - strengthening governance arrangements;
  - introducing or revising policies, strategies, guidelines or administrative processes; and
  - initiating reviews or investigations.
4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

**Table A.1: Changes implemented during the course of the audit**

Report paragraph no.	Changes implemented during the course of the audit
2.29	On 30 August 2024, the Minister issued the first Ministerial Statement of Expectations to the department's Climate Change and Energy regulatory schemes. On 3 December 2024, the department issued the Regulator Statement of Intent for Climate Change and Energy regulatory schemes. The SOE and SOI were published on the department's website in December 2024.
2.38	On 17 September 2024, the department signed a delegation instrument delegating functions and powers under sections 43, 45, 46, and 65 of the GEMS Act to employees of Energy Safe Victoria, with the agreement of the Victorian Minister for Climate Action; Energy and Resources; and the State Electricity Commission.
2.40	On 5 June 2025, the GEMS Regulator made a delegation instrument for the period 20 September 2022 to 17 September 2024 for 'the employees of Energy Safe Victoria who occupied or performed the duties of the positions specified therein during the delegation period', which was registered on the Federal Register of Legislation as a notifiable instrument.
2.50	In April 2025, the department developed a risk strategy, risk management arrangements and a risk register for the GEMS program.

Report paragraph no.	Changes implemented during the course of the audit
2.56	In March 2025, the department advised the ANAO that, as at 6 March 2025, 'staff currently working in GEMS at DCCEEW [have] completed a conflict of interest declaration'.
2.62	In January 2025, the department updated its standard operating procedures for GEMS inspections to require departmental and state-based GEMS Inspectors to complete a conflict of interest declaration prior to the commencement of inspection activities (in store and online).
2.71	In March 2025, the department established a central GEMS Policies, Procedures and Guidance Documents Register as well as standard operating procedures outlining the process for an initial review of policies, procedure and guidance documents and the establishment of a rolling review cycle.
2.82	In February 2025, the department's cyber security section granted the GEMS registration system an Interim Authority to Operate for one month 'to allow for a full security assessment of the GEMS Registration System'. In March 2025, the GEMS registration system was endorsed with a 'full authority to operate'.
2.89	In April 2025, the department advised the ANAO that it has 'implemented a system control in the Energy Rating registration system to prevent the same individual being the recommender [assessor] and decision maker [approver] on an application'.
3.20	In March 2025, the department published an updated version of the check testing policy on the Energy Rating website.
3.28	In May 2025, the department established standard operating procedures for product selection for the GEMS annual check testing program.
3.30	In April 2025, the department established standard operating procedures for annual reporting for GEMS Check Testing.
3.37	In January 2025, the department updated its market surveillance standard operating procedures to include the process for GEMS Inspectors conducting market surveillance in online stores.
3.92	In April 2025, the department established a policy for investigation management and standard operating procedures for conducting an enforcement investigation and case management.

## Appendix 3 List of GEMS determinations (in force and no longer in force)

GEMS determination (year/s)	Category <sup>a</sup>	In force?	ANAO comments
Air conditioners above 65kW (2020) (2022)	A	✓	The 2022 determination is currently in force.
Air Conditioners and Heat Pumps (2012) (2013)	A	✗	Not in force since March 2020.
Air conditioners up to 65kW (2019)	A	✓	The 2019 determination is currently in force.
Ballasts for fluorescent lamps (2012)	A	✗	Not in force since October 2024.
Close control air conditioners (2012)	A	✓	The 2012 determination is currently in force.
Clothes washing machines (2012) (2015) (2024)	A	✓	The 2015 and 2024 determinations are both listed as 'in force' on the Federal Register of Legislation.
Commercial Ice-makers (2025)	A	✓	The 2025 determination is currently in force.
Computer monitors (2013) (2014)	A	✓	The 2014 determination is currently in force.
Computers (2013)	A	✓	The 2013 determination is currently in force.
Digital television set-top boxes (2012)	A	✗	Not in force since October 2024.
Dishwashers (2012) (2015) (2024)	A	✓	The 2015 and 2024 determinations are both listed as 'in force' on the Federal Register of Legislation.
Double capped fluorescent lamps (2012) (2017)	A	✓	The 2017 determination is currently in force.
Electric water heaters (2012)	A	✓	The 2012 determination is currently in force.
External power supplies (2012) (2014)	A	✓	The 2014 determination is currently in force.
Gas water heaters (2013) (2017)	A	✓	The 2017 determination is currently in force.
Household refrigerating appliances (2012) (2019)	A	✓	The 2019 determination is currently in force.
Incandescent lamps for general lighting services (2012) (2015) (2016) (2024)	A	✓	The 2016 and 2024 determinations are both listed as 'in force' on the Federal Register of Legislation.
LED Lamps (2025)	A	✓	The 2025 determination is currently in force.
Liquid chilling packages using the vapour compression cycle (2012)	A	✓	The 2012 determination is currently in force.

GEMS determination (year/s)	Category <sup>a</sup>	In force?	ANAO comments
Power Transformers (2012)	B	✓	The 2012 determination is currently in force.
Refrigerated cabinets (2019) (2020) (2024)	A	✓	The 2024 determination is currently in force.
Refrigerated display cabinets (2012)	A	✗	Not in force since April 2021.
Rotary clothes dryers (2012) (2015) (2024)	A	✓	The 2015 and 2024 determinations are both listed as 'in force' on the Federal Register of Legislation.
Self-ballasted compact fluorescent lamps for general lighting services (2012) (2017)	A	✓	The 2017 determination is currently in force.
Swimming pool pumps (2021)	A	✓	The 2021 determination is currently in force.
Television (2012) (2013) (2013)	A	✓	The second 2013 determination is currently in force. There were two determinations in 2013. The first was in force from April 2013 to August 2013.
Three phase cage induction motors (2012) (2018) (2019)	A	✓	The 2019 determination is currently in force.
Transformers and electronic step-down converters for ELV lamps (2012)	A	✗	Not in force since October 2024.

Key: ✓ Yes ✗ No.

Notes: The 2024 determinations will commence 12 months and one day after the determination was registered on the Federal Register of Legislation, at which time the previous determination will be revoked and replaced by the 2024 determination. Section 44 of the GEMS Act provides that, during this period, regulated entities may choose to apply to register against the determination currently in force or against the new determination that has not yet commenced.

The 2025 determinations will commence 12 months and one day after the determination was registered on the Federal Register of Legislation. The 2025 determinations are new determinations and do not revoke and replace previous determinations.

Note a: GEMS products may be determined to be category A products or category B products. Category B products have a higher impact on energy use or greenhouse gas production than category A products. Different penalty levels may apply to contraventions of the GEMS Act, depending on the category of the product.

Source: Federal Register of Legislation.

## Appendix 4 GEMS fees

**Table A.2: Greenhouse and Energy Minimum Standards registration fees**

Fee band	Fee amount (\$)	GEMS determinations
1	440	Greenhouse and Energy Minimum Standards (Self-ballasted Compact Fluorescent Lamps for General Lighting Services) Determination 2017
		Greenhouse and Energy Minimum Standards (Double-Capped Fluorescent Lamps) Determination 2017
		Greenhouse and Energy Minimum Standards (External Power Supplies) Determination 2014
		Greenhouse and Energy Minimum Standards (Television) Determination 2013 (No.2)
		Greenhouse and Energy Minimum Standards (Computers) Determination 2013
		Greenhouse and Energy Minimum Standards (Computer Monitors) Determination 2014
		Greenhouse and Energy Minimum Standards (Swimming Pool Pumps) Determination 2021
		Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2016
		Greenhouse and Energy Minimum Standards (Incandescent Lamps for General Lighting Services) Determination 2024
		Greenhouse and Energy Minimum Standards (Rotary Clothes Dryers) Determination 2015
		Greenhouse and Energy Minimum Standards (Rotary Clothes Dryers) Determination 2024
		Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2015
		Greenhouse and Energy Minimum Standards (Clothes Washing Machines) Determination 2024
		Greenhouse and Energy Minimum Standards (Dishwashers) Determination 2015
		Greenhouse and Energy Minimum Standards (Dishwashers) Determination 2024
		Greenhouse and Energy Minimum Standards (LED Lamps) Determination 2025
2	540	Greenhouse and Energy Minimum Standards (Electric Water Heaters) Determination 2012
3	670	Greenhouse and Energy Minimum Standards (Gas Water Heaters) Determination 2017
		Greenhouse and Energy Minimum Standards (Air Conditioners up to 65kW) Determination 2019

Fee band	Fee amount (\$)	GEMS determinations
		Greenhouse and Energy Minimum Standards (Air Conditioners above 65kW) Determination 2022
		Greenhouse and Energy Minimum Standards (Three Phase Cage Induction Motors) Determination 2019
		Greenhouse and Energy Minimum Standards (Household Refrigerating Appliances) Determination 2019
4	780	Greenhouse and Energy Minimum Standards (Liquid-Chilling Packages Using the Vapour Compression Cycle) Determination 2012
		Greenhouse and Energy Minimum Standards (Close Control Air Conditioners) Determination 2012
		Greenhouse and Energy Minimum Standards (Refrigerated Cabinets) Determination 2024
		Greenhouse and Energy Minimum Standards (Power Transformers) Determination 2012
		Greenhouse and Energy Minimum Standards (Commercial Ice-makers) Determination 2025

Source: Schedule 2 of the Greenhouse and Energy Minimum Standards (Registration Fees) Instrument (No. 1) 2025.

**Table A.3: Fees for GEMS regulator services**

GEMS regulator service	Fee amount (\$)
Application to vary a registration to cover additional models (Act section 46)	210
Assessment of a voluntarily submitted additional test report for a registered product, where a revised test method has been specified in a replacement determination (Act sections 36 and 40)	210

Source: Schedule 1 of the Greenhouse and Energy Minimum Standards (Fees for GEMS Regulator Services) Instrument 2019.