



# **Water Efficiency Labelling and Standards Act 2005**

**No. 4, 2005**

## **Compilation No. 10**

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Water Efficiency Labelling and Standards Act 2005* that shows the text of the law as amended and in force on 5 March 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to provide for water efficiency labelling and the making of water efficiency standards, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Water Efficiency Labelling and Standards Act 2005*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	18 February 2005
2. Sections 3 to 77	The 28th day after the day on which this Act receives the Royal Assent.	18 March 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Objects of Act**

The objects of this Act are as follows:

- (a) to conserve water supplies by reducing water consumption;
- (b) to provide information for purchasers of water-use and water-saving products;
- (c) to promote the adoption of efficient and effective water-use and water-saving technologies.

### **4 Act to bind the Crown**

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

### **5 External Territories**

This Act extends to every external Territory other than Norfolk Island.

## Part 2—Interpretation

### 6 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

### 7 Definitions

In this Act, unless the contrary intention appears:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***affected person*** has the meaning given by subsections 69(2), (3) and (4).

***agency***:

(a) in relation to the Commonwealth, includes the following:

- (i) a non-corporate Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*);
- (ii) a body corporate established for a public purpose under a law of the Commonwealth; and

(b) in relation to a State or a Territory, includes the following:

- (i) a Department of State (however described) of the State or Territory;
- (ii) a body corporate established for a public purpose under a law of the State or Territory.

***applicable WELS standard*** has the meaning given by section 32.

***civil penalty order*** has the meaning given by subsection 44A(4).

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***civil penalty provision***: a provision of this Act is a ***civil penalty provision*** if:

- (a) either:
  - (i) the provision sets out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
  - (ii) another provision of this Act provides that the provision is a civil penalty provision; and
- (b) the provision is of one of the following kinds:
  - (i) a subsection, or a section that is not divided into subsections;
  - (ii) a subregulation, or a regulation that is not divided into subregulations.

***Commonwealth Department*** means the Department of State of the Commonwealth that deals with the matters to which this Act relates.

***Commonwealth Minister*** means the Minister appointed to administer the Department of State of the Commonwealth that deals with the matters to which this Act relates.

***Commonwealth Secretary*** means the Secretary of the Department of State of the Commonwealth that deals with the matters to which this Act relates.

***corresponding State-Territory law*** has the meaning given by section 12.

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***evidential material*** means:

- (a) in respect of an offence against this Act:

- (i) any thing with respect to which the offence has been committed or is suspected, on reasonable grounds, to have been committed; or
  - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of the offence; or
  - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing the offence; and
- (b) in respect of a contravention of a civil penalty provision:
- (i) any thing with respect to which the civil penalty provision has been contravened or is suspected, on reasonable grounds, of having been contravened; or
  - (ii) any thing as to which there are reasonable grounds for suspecting that it will afford evidence as to the contravention of the civil penalty provision; or
  - (iii) any thing as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of contravening the civil penalty provision.

**Executive Agency** has the same meaning as in the *Public Service Act 1999*.

**Federal Circuit Court** means the Federal Circuit Court of Australia.

**Federal Court** means the Federal Court of Australia.

**just terms** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**occupier**, in relation to premises, includes a person who apparently represents the occupier of the premises.

**offence against this Act** includes:

- (a) an offence against section 6 of the *Crimes Act 1914*; and
- (b) an offence against section 11.1, 11.4, 11.5, 136.1, 137.1 or 137.2 of the *Criminal Code*;

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that relates to this Act.

**participating State or Territory:** a State or Territory is a **participating State or Territory** if there is a corresponding State-Territory law for the State or Territory.

**person who has WELS information** has the meaning given by section 60.

**registered:** a WELS product is **registered** if the product is registered under the scheme formulated under subsection 26(1).

**Regulator** has the meaning given by section 21.

**relevant court** means:

- (a) the Federal Court; or
- (b) the Federal Circuit Court; or
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

**reviewable decision** has the meaning given by subsection 69(1).

**reviewable State-Territory decision** has the meaning given by subsection 17(2).

**Statutory Agency** has the same meaning as in the *Public Service Act 1999*.

**supply** has the meaning given by section 7A.

**this Act** includes regulations, and other legislative instruments, made under this Act.

**water-saving product** means a device, appliance or fitting that:

- (a) is not a water-use product; and
- (b) is designed to operate in place of a water-use product.

**water-use product** means a device, appliance or fitting through which, or into which, water flows as part of its normal operation.

**WELS Account** means the special account established by subsection 64(1).

**WELS business premises** means WELS premises that are open to the public on a regular basis.

**WELS inspector** means a person appointed under subsection 45(1).

**WELS-labelled** has the meaning given by subsection 20(1).

**WELS premises** means premises used for, or in connection with, the supply of one or more WELS products.

**WELS product** has the meaning given by subsection 18(1).

**WELS scheme** means the water efficiency labelling and standards scheme established by this Act and corresponding State-Territory laws.

**WELS standard** has the meaning given by section 19.

### **7A Meaning of supply**

- (1) A **supply** of a WELS product means a supply of the product in the course of trading or commercial activities, and includes:
  - (a) an offer to supply; and
  - (b) a supply (including a re-supply) by way of sale, exchange, gift, lease, loan, hire or hire-purchase; and
  - (c) a supply as part of the supply of another thing (including as a fitting or fixture).
- (2) For the purposes of subsection (1):
  - (a) offer to supply includes make available, expose, display or advertise; and
  - (b) it is irrelevant whether the supply is:
    - (i) for consideration; or
    - (ii) a wholesale or retail supply.

## **Part 3—National WELS scheme**

### **8 WELS scheme to be a national cooperative scheme**

It is the intention of the Parliament that this Act form a part of a cooperative scheme between the Commonwealth and the States and Territories to provide for national water efficiency labelling and standards.

### **9 Application of this Act**

This Act applies with respect to the following:

- (a) corporations to which paragraph 51(xx) of the Constitution applies;
- (b) trade or commerce:
  - (i) with other countries; or
  - (ii) among the States; or
  - (iii) between a State and a Territory; or
  - (iv) between 2 Territories;
- (c) the Commonwealth and agencies of the Commonwealth;
- (d) things authorised by the legislative power of the Commonwealth under paragraph 51(xxxix) of the Constitution, so far as it relates to the matters mentioned in paragraphs (a) to (c) of this section.

### **10 Relationship between this Act and other Commonwealth laws**

The provisions of this Act are in addition to, and not in substitution for, the requirements of any other law of the Commonwealth.

### **11 State and Territory laws may operate concurrently**

This Act is not intended to exclude or limit the operation of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.



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**12 Meaning of *corresponding State-Territory law***

- (1) For the purposes of this Act, *corresponding State-Territory law* means a law of a State or Territory:
- (a) whose operation involves the use of determinations made under section 18 of this Act; and
  - (b) that is declared by the Commonwealth Minister, in writing, to correspond to this Act;
- and includes such a law as amended from time to time.
- (2) A declaration under paragraph (1)(b) is a legislative instrument.

Note 1: Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the declaration: see subsection 44(1) of that Act.

Note 2: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the declaration: see subsection 54(1) of that Act.

**13 Commonwealth consent to conferral of functions etc. on the Regulator or inspectors by corresponding State-Territory laws**

- (1) A corresponding State-Territory law may confer functions or powers, or impose duties, on the Regulator.
- Note: Section 15 sets out when such a law imposes a duty on the Regulator.
- (2) A corresponding State-Territory law may confer functions or powers, or impose duties, on WELS inspectors.
- Note: Section 15 sets out when such a law imposes a duty on WELS inspectors.
- (3) Subsections (1) and (2) do not authorise the conferral of a function or power, or the imposition of a duty, by a corresponding State-Territory law to the extent to which:
- (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Regulator or WELS inspectors; or
  - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.

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- (4) The Regulator or a WELS inspector cannot perform a duty or function, or exercise a power, under a corresponding State-Territory law unless the conferral of the function or power, or the imposition of the duty, is in accordance with an agreement between the Commonwealth and the State or Territory concerned.

### **14 How duty is imposed by corresponding State-Territory laws**

#### *Application*

- (1) This section applies if a corresponding State-Territory law purports to impose a duty on the Regulator or WELS inspectors.

Note: Section 15 sets out when such a law imposes a duty on the Regulator or WELS inspectors.

#### *State or Territory legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
  - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Regulator or WELS inspectors.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 13 to the imposition of the duty by that law).

#### *Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not*

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.

- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Regulator or WELS inspectors.
- (6) Subsections (1) to (5) do not limit section 13.

### **15 When a corresponding State-Territory law imposes a duty**

For the purposes of sections 13 and 14, a corresponding State-Territory law *imposes a duty* on the Regulator or WELS inspectors if:

- (a) the law confers a function or power on the Regulator or WELS inspectors; and
- (b) the circumstances in which the function or power is conferred give rise to an obligation on the Regulator or WELS inspectors to perform the function or to exercise the power.

### **16 No doubling-up of liabilities**

- (1) If:
- (a) an act or omission is an offence against this Act and is also an offence against a law of a State or Territory; and
  - (b) the offender has been punished for the offence under the law of the State or Territory;
- the offender is not liable to be punished for the offence under this Act.

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- (2) If a person has paid, or been ordered to pay, a pecuniary penalty under a law of a State or Territory, the person is not liable to a pecuniary penalty under this Act in respect of the same conduct.

**17 Review of decisions under corresponding State-Territory laws**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable State-Territory decision.
- (2) A decision made by the Regulator in the performance of a function or the exercise of a power conferred by a corresponding State-Territory law is a ***reviewable State-Territory decision*** for the purposes of this section if:
- (a) the law under which the decision was made provides for review by the Administrative Appeals Tribunal; and
  - (b) the decision is declared by the regulations to be a reviewable State-Territory decision for the purposes of this section.
- (3) For the purposes of this section, the *Administrative Appeals Tribunal Act 1975* has effect as if a corresponding State-Territory law were an enactment.

## Part 4—WELS products and WELS standards

### 18 WELS products

- (1) The Commonwealth Minister may, by writing, determine that water-use products or water-saving products of a specified kind are ***WELS products***.
- (2) A determination under subsection (1) must set out, or incorporate by reference, the WELS standard for the products.
- (3) A determination under subsection (1) is a legislative instrument and, despite subsection 44(1) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to the determination.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the determination: see subsection 54(1) of that Act.

- (4) Before making a determination under subsection (1), the Commonwealth Minister must have agreement to the terms of the determination from a majority of the participating States and Territories.
- (5) Subsection (4) does not apply to a variation of a determination to remove an ambiguity or uncertainty, or to correct an error.
- (6) Subsection (5) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a determination under subsection (1).

### 19 WELS standards

- (1) The ***WELS standard*** must set out:
  - (a) criteria for rating the products in relation to either or both of the following:
    - (i) water efficiency;
    - (ii) general performance; and

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- (b) requirements in relation to communicating such ratings on product labels.
- (2) The **WELS standard** must require the products to be registered for the purposes of specified supplies of the product.
- (3) The **WELS standard** may require one or more of the following:
  - (a) that the products comply with specified minimum water efficiency requirements for the purposes of specified supplies of the product;
  - (b) that the products comply with specified minimum general performance requirements for the purposes of specified supplies of the product;
  - (c) that the products comply with one or more requirements relating to plumbing imposed by or under a law of a State or Territory, as in force from time to time;
  - (d) that a specified type of person or body certifies that the products comply with one or more requirements relating to plumbing imposed by or under a law of a State or Territory, as in force from time to time;
  - (e) that the products be WELS-labelled for the purposes of specified supplies of the product.

**20 Meaning of *WELS-labelled***

- (1) A product is **WELS-labelled** if it is labelled in accordance with requirements set out in the WELS standard for products of that kind.
- (2) Such requirements may relate to one or more of the following:
  - (a) the characteristics, contents, placement and quality of labels attached to products or displayed on product packaging;
  - (b) documents or other material used for, or provided in connection with, the supply of the product;
  - (c) advertising the product.

## **Part 5—The WELS Regulator**

### **21 The Regulator**

- (1) The Commonwealth Secretary must, in writing, designate a position in the Commonwealth Department as the position of Regulator.

Note: For creation of positions, see section 77 of the *Public Service Act 1999*.

- (2) The position of Regulator can only be occupied by an SES employee.
- (3) The **Regulator** is the SES employee who occupies that position.
- (4) An instrument under subsection (1) is not a legislative instrument.

### **22 Functions of the Regulator**

The Regulator has the following functions:

- (a) to administer the WELS scheme;
- (b) to provide information and advice in relation to the WELS scheme;
- (c) to undertake or commission research in relation to the WELS scheme;
- (d) to monitor and enforce compliance with the WELS scheme;
- (e) such other functions as are conferred on the Regulator by this Act or any other law.

### **23 Powers of the Regulator**

Subject to this Act, the Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

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**24 Arrangements with other agencies**

The Regulator may make an arrangement with an agency of the Commonwealth or of a State or Territory for the services of officers or employees of the agency to be made available to assist the Regulator in the performance of the functions or duties, or the exercise of the powers, of the Regulator.

**25 Delegation**

- (1) The Regulator may, by writing, delegate one or more of the Regulator's powers or functions under this Act to one or more of the following:
  - (a) an officer or employee of an agency of the Commonwealth;
  - (b) an officer or employee of an agency of a State or Territory.
- (2) The Regulator may, by writing, delegate one or more of the Regulator's powers or functions under a corresponding State-Territory law to one or more of the following:
  - (a) an officer or employee of an agency of the Commonwealth;
  - (b) an officer or employee of an agency of a State or Territory.
- (3) However, the Regulator must not delegate a power or function, under subsection (1) or (2), to an officer or employee of an agency of a State or Territory without the agreement of the State or Territory.
- (4) A delegate of the Regulator is, in the exercise of the delegate's delegated powers and functions, subject to the Regulator's directions.



## **Part 6—Registration of WELS products**

### **26 Registration of WELS products**

- (1) The Commonwealth Minister must, by legislative instrument, formulate a scheme relating to the registration of WELS products.
- (2) Without limiting subsection (1), the scheme may make provision for, or in relation to, any of the following:
  - (a) applications for registration of WELS products (including renewal of registration);
  - (b) the information or documents to be provided with applications for registration (including verification by statutory declaration of the information);
  - (c) the fees (other than fees imposed by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*) to be paid in connection with applications for registration, including methods for working out such fees and the circumstances in which fees may be waived or refunded (either in whole or in part);
  - (d) the grounds for approving or refusing applications for registration;
  - (e) the period of registration;
  - (f) the requirements to be met in order for WELS products to remain registered;
  - (g) the consequences for the registration of a product if a WELS standard for the product is varied or replaced;
  - (h) the suspension and cancellation of registration;
  - (i) the creation, maintenance and publication of a register of WELS products;
  - (j) the review of decisions made by the Regulator under the scheme;
  - (k) other matters in connection with the registration of WELS products.

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- (3) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the scheme may make different provision in relation to:
  - (a) different kinds of WELS products; or
  - (b) different kinds of applications; or
  - (c) different kinds of registrations; or
  - (d) different circumstances.
- (4) Before formulating a scheme under subsection (1), the Commonwealth Minister must have agreement to the terms of the scheme from a majority of the participating States and Territories.
- (5) Subsection (4) does not apply to a variation of the scheme to remove an ambiguity or uncertainty, or to correct an error.
- (6) Subsection (5) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to the instrument.
- (7) Despite subsection 44(1) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to the instrument.

Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not apply to the scheme (see subsection 54(1) of that Act).

*Registration fees*

- (8) The scheme formulated under subsection (1) may require or permit the Regulator to do any of the following:
  - (a) refuse, or refuse to consider, a registration application within the meaning of the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013* if a fee imposed by that Act is not paid, or is not paid within a period specified in the scheme;
  - (b) waive or refund, in whole or in part, a fee imposed by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*.

Note: The *Water Efficiency Labelling and Standards (Registration Fees) Act 2013* imposes fees for registration applications as taxes.

- (9) A provision of the scheme formulated under subsection (1) for the purposes of subsection (8) has effect despite anything else in this Act (other than Part 11) or a corresponding State-Territory law.

## **Part 7—Offences and civil penalties relating to the WELS scheme**

### **Division 1—Applicable WELS standards**

#### **32** Meaning of *applicable WELS standard*

- (1) The *applicable WELS standard* for a WELS product that is registered is the WELS standard under which the product is registered.
- (2) The *applicable WELS standard* for a WELS product that is not registered is the WELS standard included in the most recent determination made under section 18 that relates to products of that kind.

## **Division 2—Registration and labelling**

### **32A False or misleading information or documents**

A person must not provide information or a document with an application for registration of a WELS product if the person knows, or is reckless as to whether, the information or document is false or misleading in a material particular.

Civil penalty: 60 penalty units.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements.

### **33 Supply of unregistered WELS products**

- (1) A person contravenes this subsection if:
  - (a) the person supplies a WELS product; and
  - (b) the applicable WELS standard requires the product to be registered for the purposes of the supply.
- (2) Subsection (1) does not apply if the WELS product is registered at the time of the supply.

#### *Strict liability offence*

- (3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

#### *Civil penalty provision*

- (4) A person is liable to a civil penalty if the person contravenes subsection (1).

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Civil penalty: 60 penalty units.

- (5) A person who wishes to rely on subsection (2) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection.

**34 Supply of WELS products that are not WELS-labelled**

- (1) A person contravenes this subsection if:
- (a) the person supplies a WELS product; and
  - (b) the applicable WELS standard requires the WELS product to be WELS-labelled for the purposes of the supply; and
  - (c) the product is not WELS-labelled.

Note: For ***WELS-labelled***, see subsection 20(1).

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

## **Division 3—Minimum efficiency and performance requirements**

### **35 Minimum water efficiency**

- (1) A person contravenes this subsection if:
- (a) the person supplies a WELS product; and
  - (b) the applicable WELS standard requires the product:
    - (i) to be registered for the purposes of the supply; and
    - (ii) to comply with minimum water efficiency requirements for the purposes of the supply; and
  - (c) the product does not comply with those minimum water efficiency requirements.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

### **36 Minimum general performance**

- (1) A person contravenes this subsection if:
- (a) the person supplies a WELS product; and
  - (b) the applicable WELS standard requires the product:
    - (i) to be registered for the purposes of the supply; and

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- (ii) to comply with minimum general performance requirements for the purposes of the supply; and
- (c) the product does not comply with those minimum general performance requirements.

*Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.



## **Division 4—Misuse of WELS standards etc.**

### **37 Misuse of WELS standards and information**

- (1) A person contravenes this subsection if the person:
- (a) supplies a WELS product; and
  - (b) uses a WELS standard, or information included in a WELS standard, for, or in relation to, the supply of the product; and
  - (c) uses the standard, or information, in a manner that is inconsistent with the standard.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

### **37A WELS-labelling products that are not WELS products**

- (1) A person contravenes this subsection if:
- (a) the person supplies a product; and
  - (b) the product is, or purports to be, WELS-labelled; and
  - (c) the product is not a WELS product.

#### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

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Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

## **38 Information inconsistent with WELS standards**

- (1) A person contravenes this subsection if:
- (a) the person uses information for, or in relation to, the supply of a WELS product; and
  - (b) the information is inconsistent with the information contained in the applicable WELS standard for the product.

### *Strict liability offence*

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 60 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### *Civil penalty provision*

- (3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 60 penalty units.

## **39 Using information in the supply of products**

- (1) For the purposes of sections 37 and 38, information is used for, or in relation to, the supply of a product if the information is conveyed on, or by:
- (a) a label attached to the product; or

- (b) the packaging in which the product is supplied; or
  - (c) any document or other material used for, or provided in connection with, the supply of the product; or
  - (d) any advertising that relates to the product.
- (2) Subsection (1) does not limit the general meaning of words used in sections 37 and 38.

## **Part 8—Other enforcement**

### **Division 1—Infringement notices**

#### **40 Infringement notices**

- (1) The regulations may provide for a person who is alleged to have committed an offence against this Act to pay a penalty to the Commonwealth as an alternative to prosecution.
- (1A) The regulations may provide for a person who is alleged to have contravened a civil penalty provision to pay a penalty to the Commonwealth as an alternative to proceedings for a civil penalty order.
- (2) The penalty must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence or that contravention.

## **Division 2—Publicising offences**

### **41 Regulator may publicise offences**

- (1) The Regulator may publicise, in any way he or she thinks appropriate, an offence against this Act for which a person has been convicted.
- (2) This Division does not:
  - (a) limit the Regulator's powers to publicise an offence against this Act; or
  - (b) prevent anyone else from publicising an offence against this Act; or
  - (c) affect any obligation (however imposed) on anyone to publicise an offence against this Act.

## **Division 3—Enforceable undertakings**

### **42 Acceptance of undertakings**

- (1) The Regulator may accept a written undertaking given by a person in connection with a matter relating to:
  - (a) complying with a WELS standard; or
  - (b) complying with a registration condition imposed under the scheme formulated under subsection 26(1).
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Regulator.

### **43 Enforcement of undertakings**

- (1) If the Regulator considers that a person who gave an undertaking under section 42 has breached any of its terms, the Regulator may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make one or more of the following orders:
  - (a) an order directing the person to comply with that term of the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the Court considers appropriate.

## **Division 3A—Compliance audits**

### **43A Compliance audits**

- (1) This section applies if the Regulator:
  - (a) suspects, on reasonable grounds, that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
    - (i) an offence against this Act; or
    - (ii) a contravention of a civil penalty provision; and
  - (b) is satisfied that it would be in the public interest to give the person a notice under this section.
- (2) The Regulator may, by written notice given to the person, require the person:
  - (a) to undertake, or arrange for another person to undertake, an audit of whichever of the following is specified in the notice:
    - (i) the person's compliance with this Act;
    - (ii) one or more specified aspects of the person's compliance with this Act; and
  - (b) to give the Regulator a written report setting out the results of the audit.
- (3) The notice must specify:
  - (a) if the notice requires the person to arrange another person to undertake the audit—requirements relating to the qualifications and independence of the other person; and
  - (b) the matters to be covered by the audit; and
  - (c) the period within which the audit must be undertaken; and
  - (d) the form and content of the report; and
  - (e) the period within which the report must be given to the Regulator.
- (4) A person contravenes this subsection if the person is subject to a requirement under subsection (2) and the person fails to comply with the requirement.

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- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) A person is liable to a civil penalty if the person contravenes subsection (4).

Civil penalty: 30 penalty units.

- (7) A notice under subsection (2) is not a legislative instrument.



## **Division 3B—Remedial action**

### **43B Remedial action**

- (1) This section applies if the Regulator:
  - (a) suspects, on reasonable grounds, that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
    - (i) an offence against this Act; or
    - (ii) a contravention of a civil penalty provision; and
  - (b) is satisfied that it would be in the public interest to give the person a notice under this section.
- (2) The Regulator may give the person a written notice requiring the person, within a specified period, to take specified action directed toward either or both of the following:
  - (a) remedying the conduct;
  - (b) ensuring that the person does not engage, or continue to engage, in such conduct in the future.
- (3) A person contravenes this subsection if the person is subject to a requirement under subsection (2) and the person fails to comply with the requirement.
- (4) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) A person is liable to a civil penalty if the person contravenes subsection (3).

Civil penalty: 30 penalty units.
- (6) A notice under subsection (2) is not a legislative instrument.

## Division 4—Injunctions

### 44 Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute, an offence against this Act or a contravention of a civil penalty provision, the Federal Court may, on the application of the Regulator, grant an injunction:
  - (a) restraining the person from engaging in the conduct; or
  - (b) requiring the person to do an act or thing.
- (2) On an application, the Court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute, an offence against this Act or a contravention of a civil penalty provision.
- (3) The Court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The Court is not to require the Regulator or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The Court may discharge or vary an injunction it has granted.
- (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in such conduct; and
  - (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised:

- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

## **Part 8A—Civil penalty orders**

### **Division 1—Obtaining a civil penalty order**

#### **44A Civil penalty orders**

*Application for order*

- (1) The 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.
- (2) The Regulator must make the application within 4 years of the alleged contravention.

*Court may order person to pay pecuniary penalty*

- (3) If the relevant court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Subsection (5) sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

*Determining pecuniary penalty*

- (5) The pecuniary penalty must not be more than:
  - (a) if the person is a body corporate—5 times the pecuniary penalty specified for the civil penalty provision; and
  - (b) otherwise—the pecuniary penalty specified for the civil penalty provision.
- (6) In determining the pecuniary penalty, the relevant court may take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and

- (b) the nature and extent of any loss or damage suffered because of the contravention; and
- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by a court to have engaged in any similar conduct.

#### **44B Civil enforcement of penalty**

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

#### **44C Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Part against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

#### **44D Multiple contraventions**

- (1) A relevant court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 44N.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

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**44E Proceedings may be heard together**

A relevant court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**44F Civil evidence and procedure rules for civil penalty orders**

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

**44G Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

## **Division 2—Civil proceedings and criminal proceedings**

### **44H Civil proceedings after criminal proceedings**

A relevant court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### **44J Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise:
  - (a) the civil proceedings are dismissed; and
  - (b) costs must not be awarded in relation to the civil proceedings.

### **44K Criminal proceedings after civil proceedings**

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

**44L Evidence given in civil proceedings not admissible in criminal proceedings**

- (1) Evidence of information given, or evidence of production of documents by an individual, is not admissible in criminal proceedings against the individual if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.



## **Division 3—Miscellaneous**

### **44M Ancillary contravention of civil penalty provisions**

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

Note: Section 44Q (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to subsection (1) of this section.

#### *Civil penalty*

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

### **44N Continuing contraventions of civil penalty provisions**

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or

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(b) before a particular time;  
commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

**44P Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**44Q State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than section 32A or subsection 44M(1)), it is not necessary to prove:
  - (a) the person's intention; or

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- (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not affect the operation of section 44P (which is about mistake of fact).

## Part 9—WELS inspectors

### Division 1—Appointment of WELS inspectors

#### 45 Regulator may appoint WELS inspectors

- (1) The Regulator may, by writing, appoint any of the following as a WELS inspector:
  - (a) an officer or employee of an agency of the Commonwealth;
  - (b) an officer or employee of an agency of a State or Territory.
- (2) However, the Regulator must not appoint an officer or employee of an agency of a State or Territory as a WELS inspector without the agreement of the State or Territory.
- (3) In exercising his or her powers or performing his or her functions a WELS inspector must comply with any direction of the Regulator.

Note: Part 7.8 of the *Criminal Code* provides offences in relation to causing harm to, and impersonation and obstruction of, Commonwealth public officials.

#### 46 Identity cards

- (1) The Regulator must issue an identity card to each WELS inspector.
- (2) The identity card must:
  - (a) be in the form prescribed by the regulations; and
  - (b) contain a recent photograph of the WELS inspector.
- (3) A person commits an offence if:
  - (a) the person has been issued with an identity card; and
  - (b) the person ceases to be a WELS inspector; and
  - (c) the person does not return the identity card to the Regulator as soon as practicable.

Penalty: 1 penalty unit.

- (4) A WELS inspector must carry his or her identity card at all times when exercising powers or performing functions as a WELS inspector.
- (5) A WELS inspector is not entitled to exercise any powers under this Part in relation to premises if:
  - (a) the occupier of the premises has required the WELS inspector to produce his or her identity card for inspection by the occupier; and
  - (b) the WELS inspector fails to comply with the requirement.

## **Division 2—Powers of WELS inspectors**

### **47 Purposes for which powers can be used**

A WELS inspector may exercise the powers set out in this Division for the following purposes:

- (a) determining whether a person is complying with this Act;
- (b) investigating:
  - (i) a possible contravention of a civil penalty provision; or
  - (ii) a possible offence against this Act.

### **48 Inspection powers—public areas of WELS business premises**

- (1) For the purposes set out in section 47, a WELS inspector may do one or more of the following in a public area of WELS business premises when the premises are open to the public:
  - (a) inspect WELS products;
  - (b) purchase any WELS product that is available for sale;
  - (c) inspect or collect written information, advertising or any other document that is available, or made available, to the public;
  - (d) discuss product features with any person;
  - (e) observe practices relating to the supply of products.
- (2) Subsection (1) does not affect any right of the occupier of the premises to refuse to allow a WELS inspector to enter, or remain on, the premises.

### **49 Inspection powers—with consent**

- (1) A WELS inspector may enter WELS premises and exercise the powers set out in subsection (3) if the occupier of the premises consents to the entry and the exercise of those powers.

- (2) Before obtaining consent, the WELS inspector must inform the occupier that he or she may refuse consent, or withdraw consent, at any time.
- (3) For the purposes set out in section 47, a WELS inspector who enters WELS premises in accordance with subsection (1) may do one or more of the following:
  - (a) search the premises and any thing (including a vehicle) on the premises;
  - (b) inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (c) take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
  - (d) inspect any book, record or document on the premises;
  - (e) take extracts from or make copies of any such book, record or document;
  - (f) take onto the premises such equipment and materials as the WELS inspector requires for the purposes of exercising powers in relation to the premises;
  - (g) operate equipment on the premises for the purposes of gaining access to a document or record relating to one or more WELS products.

## **50 Refusing consent is not an offence**

The occupier of WELS premises does not commit an offence if:

- (a) the occupier refuses to allow a WELS inspector to enter, or remain on, the premises; and
- (b) the WELS inspector does not have a warrant to enter the premises.

## **51 Inspection powers—with warrant**

- (1) A WELS inspector may enter WELS premises and exercise the powers set out in subsection (2) if the WELS inspector has a warrant for the entry.

Note: Division 3 deals with applications for warrants.

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- (2) For the purposes set out in section 47, a WELS inspector who enters WELS premises under warrant may do one or more of the following:
- (a) exercise one or more of the powers set out in subsection 49(3);
  - (b) require any person on the premises to:
    - (i) answer any questions put by the WELS inspector; and
    - (ii) produce any book, record or document requested by the WELS inspector;
  - (c) seize or secure any evidential material on the premises.
- (3) A person commits an offence if:
- (a) the person is required to answer a question or produce a book, record or document under paragraph (2)(b); and
  - (b) the person does not answer the question or produce the book, record or document.

Penalty: Imprisonment for 6 months.

## **52 Announcement before entry under warrant**

- (1) A WELS inspector must, before entering WELS premises under a warrant:
- (a) announce that he or she is authorised to enter the premises; and
  - (b) give any person on the premises an opportunity to allow entry to the premises.
- (2) A WELS inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.

## **53 Copy of warrant to be given to occupier**

- (1) If a warrant in relation to WELS premises is being executed and the occupier of the premises is present at the premises, the WELS inspector must:



- (a) give a copy of the warrant to the occupier; and
  - (b) identify himself or herself to the occupier.
- (2) The copy of the warrant does not need to include the signature of the magistrate who issued the warrant.

#### **54 Occupier must provide inspector with facilities and assistance**

A person commits an offence if:

- (a) the person is the occupier of WELS premises; and
- (b) a WELS inspector enters the premises under a warrant; and
- (c) the person does not provide the WELS inspector with all reasonable facilities and assistance for the effective execution of the warrant.

Penalty: 30 penalty units.

#### **55 Seizing or securing evidential material**

- (1) If a WELS inspector seizes or secures evidential material on WELS premises, the WELS inspector must give the occupier of the premises a receipt for the material.
- (2) The Regulator may make copies of the material.
- (3) The Regulator may examine or test the material, even though that might result in damage or destruction of the material or a reduction in its value.
- (4) The Regulator must return or release the material when the first of the following occurs:
  - (a) the material is no longer needed for the purposes for which it was seized or secured;
  - (b) the period of 90 days that begins on the day on which the material was seized or secured ends.

#### **56 Holding evidential material for more than 90 days**

- (1) Despite paragraph 55(4)(b), the Regulator may:
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- (a) apply to a magistrate for an order allowing possession or control of evidential material for such further period as is specified in the order; and
  - (b) if the magistrate makes such an order—so retain possession or control of the material.
- (2) In determining the application, the magistrate must allow the owner of the material to appear and be heard.
- (3) The magistrate must not make an order allowing possession or control of the material for a further period unless the magistrate is satisfied that the order is necessary for the purposes of prosecuting an offence against this Act.

**57 Returning evidential material**

If the Regulator cannot, despite making reasonable efforts, locate the owner of evidential material, the Regulator may dispose of the material in such manner as the Regulator thinks appropriate.

## **Division 3—Applying for warrants to enter WELS premises**

### **58 Ordinary warrants**

#### *Application for warrant*

- (1) A WELS inspector may apply to a magistrate for a warrant to enter WELS premises.

#### *Issue of warrant*

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is necessary to enter the WELS premises for one or more of the following purposes:
  - (a) determining whether a person is complying with this Act;
  - (b) investigating:
    - (i) a possible contravention of a civil penalty provision; or
    - (ii) a possible offence against this Act.
- (3) However, the magistrate must not issue the warrant unless the WELS inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

#### *Content of warrant*

- (4) The warrant must:
    - (a) authorise the WELS inspector to enter the premises using such assistance and such force to enter the premises as is necessary and reasonable; and
    - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
    - (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
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- (d) state the purpose for which the warrant is issued.

### **59 Warrants by telephone, fax etc.**

#### *Application for warrant*

- (1) If, in an urgent case, a WELS inspector considers it necessary to do so, the WELS inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 58.
- (2) The magistrate may:
  - (a) require communication by voice to the extent that it is practicable in the circumstances; and
  - (b) make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the WELS inspector must prepare an information of the kind mentioned in subsection 58(2) that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the WELS inspector may apply for the warrant before the information is sworn or affirmed.

#### *Issue of warrant*

- (5) If the magistrate is satisfied:
  - (a) after having considered the terms of the information; and
  - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 58 if the application had been made under that section.

#### *Obligations of magistrate and inspector once warrant issued*

- (6) If the magistrate completes and signs the warrant:
  - (a) the magistrate must:

- (i) tell the WELS inspector what the terms of the warrant are; and
  - (ii) tell the WELS inspector the day on which and the time at which the warrant was signed; and
  - (iii) tell the WELS inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
  - (iv) record on the warrant the reasons for issuing the warrant; and
- (b) the WELS inspector must:
- (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The WELS inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the WELS inspector; and
  - (b) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the warrant that the magistrate completed and signed; and
  - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 58.

*Authority of warrant*

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:

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**Division 3** Applying for warrants to enter WELS premises

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- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

## **Division 4—Giving WELS information to WELS inspectors**

### **60 Meaning of *person who has WELS information***

A person is a *person who has WELS information* if the Regulator believes, on reasonable grounds, that the person is capable of giving information, or producing books, records or documents, relevant for the purposes of investigating or preventing an offence against this Act or a contravention of a civil penalty provision.

### **61 Regulator may require a person to provide information**

- (1) The Regulator may, by written notice, require a person who has WELS information to give to the WELS inspector specified in the notice, and in the manner and within the period specified in the notice:
  - (a) such information as is specified in the notice; or
  - (b) any book, record or document that is specified in the notice.The period must end not less than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
  - (a) the person is required to give information or a book, record or document to a WELS inspector under subsection (1); and
  - (b) the person does not give the WELS inspector the information, book, record or document.

Penalty: Imprisonment for 6 months.

**62 Regulator may require a person to appear before a WELS inspector**

- (1) The Regulator may, by written notice, require a person who has WELS information to appear before the WELS inspector specified in the notice, at a time and place specified in the notice:
- (a) to answer any questions put by the WELS inspector; and
  - (b) to produce to the WELS inspector such books, records or documents as are referred to in the notice.

The time must not be earlier than 14 days after the notice is given.

- (2) A notice under subsection (1) must set out the effect of sections 137.1 and 137.2 of the *Criminal Code*.
- (3) A person commits an offence if:
- (a) the person is required to appear before a WELS inspector under subsection (1); and
  - (b) the person does not appear before the WELS inspector.

Penalty: Imprisonment for 6 months.

- (4) A person commits an offence if:
- (a) the person is required under subsection (1) to appear before a WELS inspector; and
  - (b) when appearing before the WELS inspector, the person does not:
    - (i) answer a question put by the WELS inspector; or
    - (ii) produce a book, record or document to the WELS inspector as required by notice given under that subsection.

Penalty: Imprisonment for 6 months.



## **Division 5—Privilege against self-incrimination**

### **63 Privilege against self-incrimination not affected**

Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

## **Part 10—Money**

### **Division 1—The WELS Account**

#### **64 WELS Account**

- (1) The WELS Account is established.
- (2) The WELS Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

#### **65 Credits to the WELS Account**

The following must be credited to the WELS Account:

- (a) amounts equal to amounts received by the Commonwealth from the States and Territories for the purposes of the WELS scheme;
- (b) amounts equal to amounts received by the Commonwealth in connection with the performance of the Regulator's functions under this Act or a corresponding State-Territory law;
- (c) amounts equal to income received by the Commonwealth from the investment of money from the Account;
- (d) amounts equal to money received by the Commonwealth in relation to property paid for with money from the Account;
- (e) amounts equal to amounts of any gifts given or bequests made for the purposes of the Account;
- (f) amounts equal to amounts received by the Commonwealth as fees imposed by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

#### **66 Purpose of the WELS Account**

The purpose of the WELS Account is to make payments:

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- (a) to further the objects of this Act (as set out in section 3); and
- (b) otherwise in connection with the performance of the Regulator's functions under this Act or a corresponding State-Territory law.

## **Division 2—Charging fees etc.**

### **67 Regulator may charge for services**

The Regulator may charge fees for services provided by, or on behalf of, the Regulator in the performance of the Regulator's functions.

### **68 Recovery of amounts**

The following amounts may be recovered in a court of competent jurisdiction as debts due to the Commonwealth:

- (a) fees payable to the Commonwealth under this Act or a corresponding State-Territory law;
- (b) amounts payable to the Commonwealth in connection with the performance of the Regulator's functions.

## Part 11—Review of decisions

### 69 Meaning of *reviewable decision* and *affected person*

- (1) Each of the following decisions is a *reviewable decision*:
  - (a) a decision by the Regulator under the scheme formulated under subsection 26(1) to refuse to register a WELS product;
  - (b) a decision by the Regulator under the scheme formulated under subsection 26(1) to cancel or suspend the registration of a WELS product;
  - (c) a decision by the Regulator under the scheme formulated under subsection 26(1) to refuse a request (a *waiver/refund request*) to waive or refund, in whole or in part, a fee imposed by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*.
- (2) A person whose application to register a WELS product is refused is the *affected person* for the purposes of a decision referred to in paragraph (1)(a).
- (3) A person in relation to whom a WELS product is registered is the *affected person* for the purposes of a decision referred to in paragraph (1)(b).
- (4) A person whose waiver/refund request is refused is the *affected person* for the purposes of a decision referred to in paragraph (1)(c).

### 70 Notification of decisions and review rights

- (1) The Regulator must, as soon as practicable after making a reviewable decision, cause a notice in writing to be given to the affected person in relation to the decision, containing:
  - (a) the terms of the decision; and
  - (b) the reasons for the decision; and

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- (c) a statement setting out particulars of the person's review rights.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

**71 Internal review**

- (1) The affected person in relation to a reviewable decision (other than a decision made by the Regulator personally) may apply in writing to the Regulator for review (the *internal review*) of the decision.
- (2) An application for internal review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such further period (if any) as the Regulator, either before or after the end of that period, allows.
- (3) The Regulator must, on receiving an application:
  - (a) review the reviewable decision personally; or
  - (b) cause the reviewable decision to be reviewed by a person:
    - (i) to whom the Regulator's power under this section is delegated; and
    - (ii) who was not involved in the making of the decision; and
    - (iii) who occupies a position in the Commonwealth Department that is senior to that occupied by any person involved in making the decision.
- (4) After the Regulator, or the person mentioned in paragraph (3)(b), has reviewed the reviewable decision, the Regulator or the person may:
  - (a) make a decision affirming, varying or revoking the reviewable decision; and
  - (b) if the decision is revoked—make such other decision as the Regulator or the person thinks appropriate.

**72 Review of decisions by Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for review of the following decisions:
  - (a) a reviewable decision made by the Regulator personally;
  - (b) an internal review decision made under section 71.
- (2) An application under subsection (1) may be made only by the affected person concerned.
- (3) Subsection (2) has effect despite subsection 27(1) of the *Administrative Appeals Tribunal Act 1975*.

## Part 12—Miscellaneous

### 73 Compensation for damage to electronic equipment

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in section 49:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.



**74 Compensation for acquisition of property**

- (1) If:
  - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;then the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Compensation is payable out of money appropriated by the Parliament.

**75 Annual report**

- (1) The Regulator must, as soon as practicable after the end of each financial year, prepare and give to the Commonwealth Minister a report on the operation of the WELS scheme during the year.
- (2) The Minister must cause a copy of the report:
  - (a) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister; and
  - (b) to be given to each participating State and Territory.

**76 Review of operation of WELS scheme**

- (1) The Commonwealth Minister must cause an independent review of the operation of the WELS scheme to be undertaken as soon as possible after the fifth anniversary of the commencement of this section.

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- (1A) The Commonwealth Minister must cause further independent reviews of the operation of the WELS scheme to be undertaken:
- (a) within 5 years after the completion of the review referred to in subsection (1); and
  - (b) thereafter, within 5 years after the completion of the previous review.
- (2) The persons who undertake a review under this section must give the Commonwealth Minister a written report of the review.
- (3) The Commonwealth Minister must cause a copy of the report of each review:
- (a) to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Commonwealth Minister; and
  - (b) to be given to each participating State and Territory.
- (4) In this section:
- independent review* means a review undertaken by persons who:
- (a) in the Commonwealth Minister's opinion possess appropriate qualifications to undertake the review; and
  - (b) include one or more persons who are not APS employees.

### 77 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
- (a) prescribe fees in respect of matters under this Act; and
  - (b) prescribe penalties of not more than 50 penalty units for offences against the regulations; and
  - (c) declare that specified provisions of the regulations are civil penalty provisions for the purposes of this Act, and prescribe

penalties for contraventions of such provisions that do not exceed:

- (i) for a body corporate—250 penalty units; or
- (ii) in any other case—50 penalty units.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

**Endnote 3—Legislation history**

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Water Efficiency Labelling and Standards Act 2005	4, 2005	18 Feb 2005	s 3–77: 18 Mar 2005 (s 2(1) item 2) Remainder: 18 Feb 2005 (s 2(1) item 1)	—
Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006	164, 2006	11 Dec 2006	Sch 2 (item 1): 18 Mar 2005 (s 2(1) item 3) Sch 2 (item 2): 11 Dec 2006 (s 2(1) item 4)	—
Water Efficiency Labelling and Standards Amendment Act 2011	6, 2011	22 Mar 2011	Sch 1: 23 Mar 2011 (s 2(1) item 2) Remainder: 22 Mar 2011 (s 2(1) item 1)	—
Water Efficiency Labelling and Standards Amendment (Scheme Enhancements) Act 2012	108, 2012	22 July 2012	Sch 1: 22 Jan 2013 (s 2(1) item 2) Sch 2: 23 July 2012 (s 2(1) item 3) Sch 3 (item 20): 1 Nov 2013 (s 2(1) item 5) Remainder: 22 July 2012 (s 2(1) items 1, 4, 6)	Sch 1 (items 5–7), Sch 2 (item 33) and Sch 3 (items 21, 22)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 558, 559): 12 Apr 2013 (s 2(1) item 2)	—
Water Efficiency Labelling and Standards Amendment (Registration Fees) Act 2013	64, 2013	26 June 2013	Sch 1: 27 June 2013 (s 2(1) item 2) Remainder: 26 June 2013 (s 2(1) item 1)	—

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 12 (items 279–282) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 663–667): 5 Mar 2016 (s 2(1) item 2)	—



**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Pt 1</b>	
s 4 .....	am No 108, 2012
<b>Pt 2</b>	
s 7 .....	am No 164, 2006; No 108, 2012; No 13 and 64, 2013; No 62, 2014
s 7A.....	ad No 108, 2012
<b>Part 3</b>	
s 12 .....	am No 126, 2015
<b>Part 4</b>	
s 18 .....	am No 164, 2006; No 108, 2012; No 126, 2015
s 19 .....	am No 6, 2011; No 108, 2012
<b>Pt 5</b>	
s 21 .....	rs No 108, 2012
s 22 .....	rs No 108, 2012
<b>Part 6</b>	
Part 6.....	rs No 108, 2012
s 26 .....	rs No 108, 2012 am No 64, 2013; No 126, 2015
s 27 .....	rep No 108, 2012
s 28 .....	rep No 108, 2012
s 29 .....	am No 6, 2011 rep No 108, 2012
s 30 .....	rep No 108, 2012
s 31 .....	rep No 108, 2012
<b>Pt 7</b>	
hdg to Pt 7.....	rs No 108, 2012
<b>Div 2</b>	
Div 2 of Pt 7.....	rs No 108, 2012
s 32A.....	ad No 108, 2012

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 33 .....	rs No 108, 2012
s 34 .....	rs No 108, 2012
<b>Div 3</b>	
hdg to s 35.....	rs No 108, 2012
s 35 .....	am No 108, 2012
hdg to s 36.....	rs No 108, 2012
s 36 .....	am No 108, 2012
<b>Div 4</b>	
s 37 .....	am No 108, 2012
s 37A.....	ad No 108, 2012
s 38 .....	am No 108, 2012
<b>Pt 8</b>	
<b>Div 1</b>	
s 40 .....	am No 108, 2012
<b>Div 3</b>	
s 42 .....	am No 108, 2012
<b>Div 3A</b>	
Div 3A of Pt 8.....	ad No 108, 2012
s 43A.....	ad No 108, 2012
<b>Div 3B</b>	
Div 3B of Pt 8.....	ad No 108, 2012
s 43B.....	ad No 108, 2012
<b>Div 4</b>	
s 44 .....	am No 108, 2012
<b>Pt 8A</b>	
Pt 8A.....	ad No 108, 2012
<b>Div 1</b>	
s 44A.....	ad No 108, 2012
s 44B.....	ad No 108, 2012
s 44C.....	ad No 108, 2012
s 44D.....	ad No 108, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 44E.....	ad No 108, 2012
s 44F.....	ad No 108, 2012
s 44G.....	ad No 108, 2012
<b>Div 2</b>	
s 44H.....	ad No 108, 2012
s 44J.....	ad No 108, 2012
s 44K.....	ad No 108, 2012
s 44L.....	ad No 108, 2012
<b>Div 3</b>	
s 44M.....	ad No 108, 2012
s 44N.....	ad No 108, 2012
s 44P.....	ad No 108, 2012
s 44Q.....	ad No 108, 2012
<b>Pt 9</b>	
<b>Div 2</b>	
s 47.....	am No 108, 2012
<b>Div 3</b>	
s 58.....	am No 108, 2012
<b>Div 4</b>	
s 60.....	am No 108, 2012
<b>Pt 10</b>	
<b>Div 1</b>	
s 64.....	am No 62, 2014
s 65.....	am No 108, 2012; No 64, 2013
Note to s 65.....	am No 62, 2014
s 66.....	am No 108, 2012
<b>Div 2</b>	
s 68.....	am No 108, 2012
<b>Pt 11</b>	
s 69.....	rs No 108, 2012 am No 64, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 71 .....	am No 108, 2012
s 72 .....	am No 108, 2012
<b>Pt 12</b>	
s 76 .....	am No 108, 2012
s 77 .....	am No 108, 2012

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