



Water Efficiency Labelling and Standards Act 2005

No. 4, 2005

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Water Efficiency Labelling and Standards Act 2005

No. 4, 2005

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

[Assented to 18 February 2005]

The Parliament of Australia enacts:

Section 1

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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;

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- (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 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) and (3).

agency:

- (a) in relation to the Commonwealth, includes the following:
 - (i) an Agency within the meaning of the *Financial Management and Accountability Act 1997*;
 - (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.

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.

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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 material means any thing that may be relevant to the investigation or prosecution of an offence against this Act.

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

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

participating State or Territory has the meaning given by subsection 18(5).

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

registered means registered under a WELS standard.

Regulator has the meaning given by section 21.

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

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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 means:

- (a) supply for consideration; or
- (b) offer to supply for consideration.

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.

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 for the purposes of the *Legislative Instruments Act 2003* but neither section 42 of that Act nor Part 6 of that Act applies to the instrument.

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.

- (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

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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.
- (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 and in accordance with subsection (4), determine that water-use or water-saving products of a specified kind are ***WELS products***.
- (2) A determination under subsection (1) must set out the WELS standard for the products.
- (3) A determination under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and, despite subsection 44(1) of that Act, section 42 of that Act applies to the determination. However, Part 6 of that Act does not apply to the determination.
- (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) A State or Territory is a ***participating State or Territory*** if there is a corresponding State-Territory law for the State or Territory.

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
 - (b) requirements in relation to communicating such ratings on product labels.
- (2) The ***WELS standard*** may require the products to be registered for the purposes of specified supplies of the product.

- (3) If the WELS standard requires the products to be registered, the **WELS standard** may also require either or both 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.
- (4) The **WELS standard** may require products that are registered (whether required to be registered or not) to 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

The Commonwealth Secretary is the *Regulator*.

22 Functions of the Regulator

The Regulator has the following functions:

- (a) to administer the WELS scheme;
- (b) to undertake or commission research in relation to water-use and water-saving products;
- (c) to provide advice in relation to determining that water-use or water-saving products are WELS products;
- (d) to undertake or commission research in relation to WELS standards;
- (e) to assist in the development of WELS standards;
- (f) to provide information and advice to the Commonwealth Minister about the operation of WELS standards;
- (g) to provide information and advice to:
 - (i) the Commonwealth Minister; and
 - (ii) the States and Territories; and
 - (iii) the public;about the operation of the WELS scheme;
- (h) to undertake or commission research in relation to the effectiveness of WELS standards in relation to reducing water usage;
- (i) such other functions as are conferred on the Regulator by this Act, the regulations 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.

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 Applying for registration

- (1) The manufacturer of a WELS product may apply in writing to the Regulator for registration of the product.

Note 1: A WELS standard may require products to be registered for the purposes of specified supplies: see subsection 19(2). It is an offence to supply an unregistered product if the product is required to be registered for the purposes of the supply: see section 33.

However, WELS products can be registered even if registration is not required, but, once a product is registered, WELS-labelling requirements may apply: see subsection 19(4). It is an offence to supply a product that is not WELS-labelled if WELS-labelling requirements apply: see section 34.

Note 2: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements.

- (2) The regulations may prescribe circumstances in which a person who is not the manufacturer of a WELS product is taken to be the manufacturer of the product for the purposes of subsection (1) and paragraph 31(3)(b).

27 Documentation etc. to be provided with application for registration

- (1) An application for registration of a WELS product must be made in the manner and form determined in writing by the Commonwealth Minister, and must be accompanied by:
 - (a) any documentation (including test results and sample labels) specified in the determination; and
 - (b) any registration fee specified in the determination.
- (2) A determination under subsection (1) may also specify conditions that must be complied with in order for a product to remain registered.

- (3) A determination under subsection (1) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and, despite subsection 44(1) of that Act, section 42 of that Act applies to the determination. However, Part 6 of that Act does not apply to the determination.

28 Registration of products

- (1) If:
- (a) an application is made for registration of a WELS product; and
 - (b) the Regulator does not refuse to register the product under section 29;
- the Regulator must, by notice published in the *Commonwealth of Australia Gazette*, register the product.
- (2) The Regulator must give the applicant written notice of the registration or refusal.
- (3) If, at the end of the period of 3 months that begins on the day on which the application is made:
- (a) a notice registering the product has not been published in the *Commonwealth of Australia Gazette*; and
 - (b) the applicant has not been notified, under subsection (2), that the Regulator has refused to register the product;
- the Regulator is taken to have refused to register the product.

29 Grounds for refusing to register

The Regulator may refuse to register a WELS product if:

- (a) the application is not made in accordance with the applicable determination under subsection 27(1); or
- (b) the Regulator is not satisfied that all of the information provided in the application is accurate; or
- (c) the product does not satisfy a minimum water efficiency or minimum general performance requirement that the product is required to satisfy by the WELS standard for products of that kind.

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30 Period of registration

- (1) Unless subsection (2) applies, a WELS product that is registered remains registered until the first of the following happens:
 - (a) the registration is cancelled or suspended under section 31;
 - (b) the period of 5 years that begins on the day on which the product is registered ends.
- (2) If:
 - (a) a WELS product is registered under a WELS standard (the *first WELS standard*); and
 - (b) the first WELS standard is replaced;the product remains registered under the first WELS standard until the first of the following happens:
 - (c) the product is registered under a WELS standard other than the first WELS standard;
 - (d) the period of one year that begins on the day on which the first WELS standard was replaced ends.
- (3) The Commonwealth Minister may, by writing, determine that, for specified purposes, the period of one year mentioned in paragraph (2)(d) is extended by a further specified period.
- (4) A determination under subsection (3) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and, despite subsection 44(1) of that Act, section 42 of that Act applies to the determination. However, Part 6 of that Act does not apply to the determination.

31 Cancelling or suspending registration

- (1) The Regulator may, by notice published in the *Commonwealth of Australia Gazette*, cancel or suspend the registration of a WELS product if:
 - (a) registration conditions are not complied with (see subsection 27(2)); or
 - (b) the Regulator is satisfied that information provided in the application for registration of the product:

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- (i) was not accurate at the time of the application; or
 - (ii) is no longer accurate because changes have been made to the product.
- (2) If the Regulator cancels or suspends the registration of a WELS product under subsection (1), the Regulator must give written notice of the cancellation or suspension to the person on whose application the product was registered.
- (3) The Regulator must, by notice published in the *Commonwealth of Australia Gazette*, cancel the registration of a WELS product if:
 - (a) the WELS standard included in the most recent determination made under section 18 that relates to products of that kind does not require the product to be registered; and
 - (b) the manufacturer on whose application the product was registered makes a written request to the Regulator for the registration to be cancelled.

Part 7—Offences relating to the supply of WELS products

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

33 Registration requirement

- (1) A person commits an offence 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; and
 - (c) the product is not registered.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

34 Labelling registered products

- (1) A person commits an offence if:
- (a) the person supplies a WELS product; and
 - (b) the product is registered; and
 - (c) the applicable WELS standard requires registered products to be WELS-labelled for the purposes of the supply; and
 - (d) the product is not WELS-labelled.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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Division 3—Minimum efficiency and performance requirements

35 Minimum water efficiency—products required to be registered

- (1) A person commits an offence 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.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

36 Minimum general performance—products required to be registered

- (1) A person commits an offence 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 general performance requirements for the purposes of the supply; and
 - (c) the product does not comply with those minimum general performance requirements.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Division 4—Misuse of WELS standards etc.

37 Misuse of WELS standards and information

- (1) A person commits an offence 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.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.

38 Information inconsistent with WELS standards

- (1) A person commits an offence 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.

Penalty: 60 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note: Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.

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

Part 7 Offences relating to the supply of WELS products

Division 4 Misuse of WELS standards etc.

Section 39

- (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 Part 7 to pay a penalty to the Commonwealth as an alternative to prosecution.
- (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.

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 (see subsection 27(2)).
- (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 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, 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.
- (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:

Section 44

- (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 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.

Section 46

- (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 or the regulations;
- (b) investigating a possible offence against this Act or the regulations.

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.

- (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:

Section 52

- (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:
 - (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

Section 57

- (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 or the regulations;
 - (b) investigating a possible offence against this Act or the regulations.
- (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

Section 59

- (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:

Part 9 WELS inspectors

Division 3 Applying for warrants to enter WELS premises

Section 59

- (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.

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.

Section 62

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 *Financial Management and Accountability Act 1997*.

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, the regulations 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.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the 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:

- (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, the regulations 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, the regulations 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 to refuse to register a WELS product under section 29;
 - (b) a decision by the Regulator to cancel or suspend the registration of a WELS product under section 31.
- (2) A person whose application to register a WELS product is refused under section 29 is the ***affected person*** in relation to the decision to refuse to register the WELS product.
- (3) The person on whose application a WELS product was registered is the ***affected person*** in relation to a decision to cancel or suspend that registration under section 31.

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
 - (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.

Section 72

- (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, review the reviewable decision personally.
- (4) The Regulator may:
 - (a) make a decision affirming, varying or revoking the reviewable decision; and
 - (b) if the Regulator revokes the decision, make such other decision as the Regulator 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 by the Regulator 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.

Section 74

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.

Section 77

- (2) The persons who undertake the review must give the Commonwealth Minister a written report of the review.
- (3) The Commonwealth Minister must cause a copy of the report of the 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 (including the regulations); and
 - (b) prescribe penalties of not more than 50 penalty units for offences against the regulations.

*[Minister's second reading speech made in—
House of Representatives on 1 December 2004
Senate on 8 February 2005]*

(225/04)