THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WATER EFFICIENCY LABELLING AND STANDARDS AMENDMENT (REGISTRATION FEES) BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary for Sustainability and Urban Water, the Honourable Don Farrell MP)
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(REGISTRATION FEES) BILL 2013

GENERAL OUTLINE

Purpose

The Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013 makes consequential amendments to the Water Efficiency Labelling and Standards Act 2005(Cth) necessary to give effect to the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013. The latter Bill provides legislative power to recover costs of the Water Efficiency Labelling and Standards (WELS) scheme through fees in the form of a tax.

Background

The WELS scheme is established by the Water Efficiency Labelling and Standards Act 2005(Cth) (WELS Act) and corresponding State and Territory legislation.

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

The WELS scheme aims to address these objectives by requiring registration and labelling of specified products to show their water efficiency for the purposes of supply, and setting minimum water efficiency standards which products must meet if they are to be supplied.

This Bill, along with the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013, completes the legislative changes to the scheme which are required to implement the Standing Council on Environment and Water’s November 2011 decision that the scheme should recover 80 per cent of its costs from registrants. This decision reiterated the intention of governments at the scheme’s inception.

The Water Efficiency Labelling and Standards (Registration Fees) Bill 2013 allows the Minister to set fees for applications for registration under the WELS scheme which take into account any or all costs of the scheme. The scheme would otherwise be limited to only charging a fee for service, reducing the range of costs which may be taken into account when setting the fees.

This consequential amendment Bill provides transitional arrangements and ensures that registration fees are able to be appropriately administered by the WELS Regulator.

FINANCIAL IMPACT STATEMENT

The Bill by itself has no financial implications.

REGULATORY IMPACT STATEMENT

The Office of Best Practice Regulation advised that a formal Regulatory Impact Statement for this Bill is not required.
A cost recovery impact statement was prepared in relation to fee setting for the WELS scheme.

**Statement of Compatibility with Human Rights**

*Prepared in Accordance of Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Bill**

The *Water Efficiency Labelling and Standards (Registration Fees) Bill 2013* and the *Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013* together provide a legislative framework allowing cost recovery for the WELS scheme.

The WELS Act provides for the registration and labelling of water using or water conserving products for the purposes of supply. The *Water Efficiency Labelling and Standards (Registration Fees) Bill 2013* provides the legislative basis for fees (in the form of a tax) to be charged in relation to applications for registration made under the WELS Act. This Bill provides the transitional arrangements and consequential amendments to the *Water Efficiency Labelling and Standards Act 2005* to ensure that the Regulator is able to properly administer the fees.

**Human Rights implications**

This Bill has been assessed against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This Bill does not engage any of the applicable rights or freedoms.

**Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

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The Hon Don Farrell MP  
Parliamentary Secretary for Sustainability and Urban Water
NOTES ON CLAUSES

Part 1—Preliminary

Clause 1: Short Title

1. This clause establishes the short title of the Act as the Water Efficiency Labelling and Standards Amendment (Registration Fees) Act 2013.

Clause 2: Commencement

2. This clause provides that the commencement date for sections 1 to 3, and anything else in the Act other than Schedule 1, is the day the Act receives Royal Assent.

3. The commencement date for Schedule 1, set out in of Column 1 of the table, is to be the same as the commencement date for the Water Efficiency Labelling and Standards (Registration Fees) Act 2013.

Clause 3: Schedule(s)

4. Clause 3 provides that Schedules to this Act amend or repeal the Acts listed in the Schedules and that any other item in a Schedule to this Act has the effect stated in the Schedule.

Schedule 1 - Amendments

Water Efficiency Labelling and Standards Act 2005

Item 1: Section 7 (definition of affected person)

5. This item amends the definition of ‘affected person’ so that it includes the meanings given in subsections 69 (2), (3) and new subclause (4).

Item 2: Paragraph 26(2)(c)

6. This item inserts a limitation into paragraph 26(2)(c) of the WELS Act. It provides that while the legislative instrument made by the Minister under section 26 of the WELS Act may set fees in relation to applications for registration (see section 26(2)(c) of the WELS Act), the instrument may not set the fees imposed by the Water Efficiency Labelling and Standards (Registration Fees) Act 2013.

7. At the time of commencement of this Act, it is intended that the section 26 WELS fee for registration applications be replaced by a fee imposed under a legislative instrument made under section 8 of the Water Efficiency Labelling and Standards (Registration Fees) Act 2013.

8. The ability to set a fee for service has been retained in the Water Efficiency Labelling and Standards Act 2005 for future flexibility in the design of the WELS registration arrangements.
Item 3: At the end of section 26 (after the note)

9. Item 2 adds new subsections (8) and (9) into section 26 of the WELS Act. Paragraph 26(8)(a) adds to the matters the Minister may include in the legislative instrument made under section 26 of the WELS Act. These additional matters may require or permit the WELS Regulator refuse, or refuse to consider an application where the fee imposed under the Water Efficiency Labelling and Standards (Registration Fees) Act 2013 has not been paid, or is not paid within the specified time. Such requirements would ensure that registration fees are paid prior to applications being accepted, ensuring that applicants for registration may not benefit from product registration without having paid for it.

10. Paragraph 26(8)(b) provides that the legislative instrument formulating the WELS Scheme may also require or permit the Regulator to waive or refund, in whole or part, a fee imposed by the Water Efficiency Labelling and Standards (Registration Fees) Act 2013. It is intended that any matters so included in a legislative instrument made under section 26 would be included for the purposes of assisting the Regulator to administer the registration fees in a fair and efficient manner. It is not intended that these matters would contribute to the registration fees being administered in an inconsistent or arbitrary manner. The scheme formulated would specify any considerations or circumstances under which a waiver or refund of the application fee would be considered by the Regulator. Examples of instances where such rules would assist the appropriate administration of the WELS scheme are provided below.

11. Example 1. WELS products such as showers and taps may be registered in relation to their performance under both low and normal water pressures, with separate applications required for each pressure. In cases where the Regulator has already received a fee for an application for registration of a product for one pressure performance, it would be appropriate for the legislative instrument to allow or require the Regulator to waive a fee for an application made in relation to the same product for its other performance.

12. Example 2. As the fee for registration applications must be paid in advance, a fee may be paid in relation to an application for a product which may not be registered. In such cases the Regulator ought to be able to refund the whole or part of the fee, given that the fee will have been calculated taking into account more than the costs of processing applications for registration.

13. Example 3. Where a fee has been charged in relation to an application where a fee was not required, or where the wrong fee was charged and paid, the Regulator should be required to refund whole or part of the paid fee, as appropriate.

14. Subsection 26(9) provides that where there is inconsistency between a provision in the scheme formulated under subsection 26(1) in relation to registration fees in subsection 26(8) and a provision in the WELS Act or in a corresponding State or Territory law, then the scheme formulated would prevail. The only exception is in relation to Part 11 – Review of Decisions, as it is not intended to prevent review of decisions made for the purposes of subsection (8).

15. The scheme formulated under section 26(1) of the Act may only be made by the Commonwealth Minister with the consent of a majority of the states and territories.

Item 4: At the end of section 65

16. Item 3 inserts paragraph 65(f) into the WELS Act. This item provides that amounts equal to the fees imposed by the Water Efficiency Labelling and Standards (Registration Fees)
Act 2013 and received by the Commonwealth must be credited to the WELS Special Account. This account is a Special Account under the Financial Management and Accountability Act 1997 and payments can be made out of this account only if they meet the requirements set out in section 66 of the WELS Act.

**Item 5: At the end of subsection 69(1)**

17. This adds to the list of reviewable decisions defined in section 69. The addition relates to decisions by the Regulator to refuse a request to waive or refund a fee or part of a fee imposed by the Water Efficiency Labelling and Standards (Registration Fees) Act 2013. Grounds for making such decisions may be included in the legislative instrument made under s 26 (1) of the Water Efficiency Labelling and Standards Act 2005.

**Item 6: At the end of section 69**

18. This item adds to the list of ‘affected persons’, so that it includes a person whose request for a fee waiver or refund has been refused by the Regulator.