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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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

GENERAL OUTLINE

Purpose

The Water Efficiency Labelling and Standards (Registration Fees) Bill 2013 provides legislative power to recover costs of the administration of the Water Efficiency Labelling and Standards (WELS) scheme through taxes, in the form of fees for applying for registration.

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 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 is accompanied by the Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013, which makes consequential amendments to the WELS Act. Together, these Bills provide the legal basis for implementation of 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 Bill will enable the Minister to set fees for applications for registration under the WELS scheme, taking into account all costs of the scheme. In the absence of this Bill and the consequential amendments to the WELS Act, the scheme would be limited to charging a fee for service, which may only take into account scheme costs associated with product registration.

FINANCIAL IMPACT STATEMENT

The Bill is a cost recovery taxing statute which will allow the scheme to set fees which are calculated to recover the costs of the scheme to the extent intended by the Government of the day (the current intention is for 80 per cent cost recovery). The quantum of the fee will be set by the Commonwealth Minister in a legislative instrument after consultation with the states and territories. The Bill by itself has no financial implications, as it requires that the quantum of WELS scheme registration fees be set in a legislative instrument.
REGULATORY IMPACT STATEMENT

The Office of Best Practice Regulation advised that a formal Regulatory Impact Statement is not required for this Bill.

A cost recovery impact statement was prepared in relation to fee setting for the WELS scheme.

Statement of Compatibility with Human Rights


**Water Efficiency Labelling and Standards (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, and allows the setting of fees. The _Water Efficiency Labelling and Standards (Registration Fees) Bill 2013_ establishes the legislative basis for fees for applying for registration under the _WELS Act_, to recover costs of the scheme through a fee in the form of a tax (rather than being limited to a fee for service as was previously the case). In this way, the extent of cost recovery can be determined by the government of the day, taking into account any, or all, of the costs of the WELS scheme.

Consistent with section 55 of the Australian Constitution, the power to establish fees as taxes is established separate from other provisions. This Bill deals only with the imposition of the tax.

Registration fees will be set to recover that proportion of the costs of the scheme determined by the Commonwealth Minister, after consulting with the States and Territories. At this time, a target of 80 per cent cost recovery has been set by the Standing Council on Environment and Water. All scheme costs may be taken into account in setting the fee, including but not limited to, costs associated with processing registration applications, compliance monitoring and enforcement, policy, standard development and communications.

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.

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 (Registration Fees) Act 2013*.

Clause 2: Commencement

2. This clause provides the commencement date for this Act is the day after the Act receives Royal Assent.

Clause 3: Act binds the Crown

3. This clause ensures the Act binds the Crown in each of its capacities.

Clause 4: Application of this Act

4. This clause provides that registration applications covered by this Act are those made in or outside Australia which are made on or after 15 September 2013. This clause ensures that the tax is not applied retrospectively. This is the opening of the period during which registrations under the WELS Act may be renewed and follows the completion of the transition arrangements established in the *Water Efficiency Labelling and Standards (Scheme Enhancements) Act 2012*.

Clause 5: Act does not impose tax on property of a State

5. Clause 5 provides that this Act does not impose taxation on property belonging to a State. Section 114 of the Constitution provides that the Commonwealth does not have the power to impose taxes on state property. If registration fees were found to be a form of taxation on property of a State, clause 5 would excuse the State from any legal obligation to pay those fees. However, nothing in the Act would prevent a State voluntarily paying registration fees.

Clause 6: Definitions

6. This clause provides definitions of ‘registration application’ and ‘registration fees’ when used in the Act.

7. The definition of ‘registration application’ includes applications for registration of WELS products made in relation to the WELS Act and the corresponding State and Territory laws.

8. The definition of ‘registration fees’ is as provided in subsection 7(1). Part 2 of the Act provides for the imposition of registration fees and matters relating to the amount of fees.

9. Other relevant expressions have the same meaning as in the WELS Act.
Part 2—Registration fees

Clause 7: Imposition of registration fees

10. Subsection 7(1) permits the Minister to specify registration fees for registration applications by legislative instrument. Setting the fees by legislative instrument provides necessary flexibility, so that the quantum of the fee can be changed from time to time to reflect the costs of the WELS scheme, without an amendment Act being required. However, the Act provides for clear consultation requirements under subsection 7(4) before a legislative instrument is made.

11. Subsection 7(2) provides that the registration application fees are imposed as taxes.

12. Subsection 7(3) provides that a registration application may include a single registration fee, or two or more registration fees. It is intended at this time that the WELS scheme would only charge a single fee for an application for registration, however, this subsection has been included to allow future flexibility in the design of the scheme.

13. As the scheme is administered by the Commonwealth on behalf of the States and Territories, and each contributes funding to the scheme, the Act places consultation obligations on the Minister before specifying registration fees. The Minister is required to provide a draft of the instrument (specifying the registration fees) to each participating State or Territory (subsection 7(4)). If the Minister received comments from the States or Territories, he or she would be able to take them into account only to the extent that they are related to the cost of administering the WELS scheme (as provided in subsection 8(2)).

14. The note at the end of section 7 refers to subsection 26(8) of the WELS Act (which is being included through amendment made by the Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013). Subsection 26(8) provides that the scheme formulated by the Minister relating to the registration of WELS products, may provide for the Regulator to refuse, or refuse to consider, an application in the absence of payment of the fee, or where the fee is not paid within the specified period, or to waive or refund whole or part of the fee.

Clause 8: Matters relating to amount of fees

15. Subsection 8(1) provides that a legislative instrument made under subsection 7(1) to specify registration fees may do so by nominating an amount as the fee or by providing a formula for calculating the amount of the fee.

16. Subsection 8(2) provides that before setting the fee the Minister must be satisfied that the fee is not intended to recover more than 100 per cent of the costs of administering the scheme.

17. It is proposed that the fee would be intended to recover 80 per cent of the costs of the administering the scheme. As governments may wish to change this policy in the future, this section provides flexibility as to the extent of cost recovery which is to be achieved, so long as the fee is not intended to raise revenue for purposes which are not costs of the scheme.

18. Additionally, as the cost of administering corresponding State—Territory laws is included in the costs of administering the scheme, the Minister may, when setting the fee, have regard to relevant decisions made by the participating jurisdictions in relation to the
budget for the scheme. For example, the Minister may consider the agreements on the annual cost of the scheme made by Ministers in relation to each three-year WELS strategic plan.

**Part 3 – Miscellaneous**

**Clause 9: Regulations**

19. Clause 9 enables the Governor-General to make regulations to prescribe any matters convenient or necessary to carry out or give effect to the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013.*