EXPLANATORY STATEMENT

Issued by the Parliamentary Secretary for Sustainability and Urban Water

*Water Efficiency Labelling and Standards Act 2005*

*Water Efficiency Labelling and Standards Determination 2013*

The *Water Efficiency Labelling and Standards Act 2005* (the Act) provides a framework for mandating Water Efficiency Labelling and Standards (WELS) for a range of prescribed products. This legislation delivers important water conservation benefits by enabling consumers to choose between products on the basis of water efficiency. It also allows the setting of minimum water efficiency standards for water using products.

Subsection 18 (1) of the Act provides that the Commonwealth Minister may, by writing and in accordance with subsection 18 (4), determine that water-use or water-saving products of a specified kind are WELS products. Subsection 18 (2) of the Act specifies that a determination under subsection 18 (1) must set out or incorporate the WELS standard for those products.

Subsection 33 (3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument (including rules, regulations or by-laws) the power shall, unless the contrary intention appears, be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary any such instrument.

The Water Efficiency Labelling and Standards Determination 2013 (the Determination) is being made following substantial amendments to the Act which were made by the *Water Efficiency Labelling and Standards Amendment (Scheme Enhancements) Act 2012* (the amendment Act). The amended section 26 of the Act provides that the Commonwealth Minister must, by legislative instrument, formulate a scheme relating to the registration of WELS products which may make provision for matters including applications for registration, registration fees and the period of registration. Some of these matters were previously specified in the Act. This Determination repeals and replaces the 2011 WELS Determination, and covers a wider range of matters than that earlier Determination.

In accordance with subsections 19 (1) and 19 (2) of the Act, the WELS standard sets out the requirements for WELS products to be registered and establishes the criteria for rating and labelling products in relation to water efficiency and general performance. Subsection 19 (3) of the Act provides that the WELS standard may also specify minimum water efficiency requirements and/or minimum general performance requirements. The WELS standard may also include additional requirements relating to plumbing under subsection 19 (3A) and require registered products to be WELS-labelled for the purpose of specified supplies of the product, under subsection 19 (4) of the Act.

Subsection 18 (4) of the Act requires that the Commonwealth Minister must have agreement to the terms of a determination from a majority of the participating States and Territories. This state and territory consultation process was undertaken and majority agreement reached.

The *Water Efficiency Labelling and Standards Determination 2013* is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth) and commences on 22 January 2013.
Section 1 of the Determination provides that the name of the Determination is the Water Efficiency Labelling and Standards Determination 2013.

Section 2 of the Determination provides that the Determination takes effect on 22 January 2013.

Section 3 repeals the Water Efficiency Labelling and Standards Determination 2011.

Section 4 provides definitions for “Act”, “AS/NZS 3500”, “AS/NZS 6400”, “charging year”, “clothes washing machine”, “conformity assessment body”, “Plumbing Code”, “registrant” and “WELS standard”.

In the definition of “AS/NZS 3500”, the intention of “in force from time to time” is that this Determination references the most recent version of AS/NZS 3500. AS/NZS 3500 is referenced in this way in accordance with s19 (3A)(a) of the Water Efficiency Labelling and Standards Act 2005. AS/NZS 6400, however, is called up as a specific version, reflecting standard Commonwealth practice and ensuring that the Minister is able to define the registration elements of the WELS scheme, rather than them being set by the author of AS/NZS 6400, which is a non-government body.

Section 5 Showers, dishwashers, clothes washing machines, flow controllers and lavatory, urinal and tap equipment are WELS products, if the WELS standard applies to them. It may be necessary to refer to the WELS standard or Australian Standards referenced by the WELS standard in order to determine whether the WELS standard applies to a particular product. For example, AS/NZS 6400 provides that the WELS scheme covers showers intended for personal bathing, but excludes those designed for emergency deluge use.

Section 6 provides that for subsection 18 (2) of the Act, the WELS standard incorporates by reference the Australian and New Zealand Standard AS/NZS 6400:2005 (Incorporating Amendment Numbers 1 through to 5) Water efficient products—Rating and labelling), excluding C.3 - C.6 of Appendix C. AS/NZS 6400 sets out various requirements for WELS products, including the standards they must meet, how to determine their star rating and how the products are to be labelled. The WELS standard also includes additional requirements outlined in section 7 of the Determination.

Sections C.3, C.4, C.5 and C.6 of AS/NZS 6400 have been excluded from the WELS standard as it is not intended that the WELS Scheme enforce registration requirements in the used goods market.

Section 7 sets out the WELS standard requirements, as follows:

Subsection 7(1) provides that for subsection 19(2) of the Act, WELS products except flow controllers must be registered for supply as a new product for any purpose. Registration of flow controllers continues to be on a voluntary basis.

Subsection 7(2) provides that for subsection 19(3A) of the Act, showers, lavatory equipment, urinal equipment, tap equipment and flow controllers that are covered by the WELS standard must comply with Section G of the Plumbing Code or section 2.2 of Part 1 of AS/NZS 3500. Evidence of compliance with these requirements is generally in the form of WaterMark certification.

The WaterMark Certification system is intended to ensure that plumbing products are fit for use. Under state and territory law WaterMark certification is a mandatory requirement for products when installed. States and territories are currently in the process of changing the way
WaterMark is made a requirement, by moving to reference the Plumbing Code (Volume 3 of the National Construction Code) rather than AS/NZS 3500.

This Determination makes WaterMark Certification a requirement for WELS registration, but only to the extent that WaterMark Certification is required by the states and territories through the Plumbing Code or AS/NZS 3500. WaterMark certification is required by the states and territories for products connected to the reticulated water supply system (e.g. a city water supply), rather than those used in an isolated water system (such as a remote building with its own water tank). Thus WaterMark Certification is not required for WELS registration of products that are intended for use solely in a non-reticulated system.

Subsection 7(3) provides that for the purposes of subsection 19(4) of the Act, a registered WELS product must be WELS-labelled for supply as a new product for any purpose.

Section 8 sets out requirements for applications for registration of new products i.e. those not currently registered. This section thus applies to registrations for new products or unregistered products which have previously been registered.

Subsection 8(1) sets out the requirements for a WELS registrant. It is expected that a registrant would be the manufacturer in most cases, however, an importer, retailer or other person may register a product. Any registration applications made by a person that is not the manufacturer will need to either show in writing that the manufacturer agreed, or satisfy the Regulator that registering the product is nevertheless appropriate.

Subsection 8(2) provides that the application must be made on a Regulator-approved form, which can be found at www.waterrating.gov.au.

Subsection 8(3) provides that supporting material must be provided as part of an application. Test reports must be prepared by a laboratory approved by the Regulator. Certifications evaluating the compliance of the product with requirements in the WELS standard are to be produced by a conformity assessment body approved by JAS-ANZ (the joint government appointed accreditation body for Australia and New Zealand), or international equivalents. A sample of the proposed WELS water rating label is also required.

Subsection 8(4) provides that the application may be accompanied by any other document relevant to the compliance of the product with the water efficiency or performance requirements set out in the WELS standard for products of that type.

Section 9 sets out requirements for applications for renewal of registration of products currently registered.

Subsection 9(1) provides that the registrant may submit an application to renew the registration.

Subsection 9(2) provides that the application must be made on a Regulator-approved form, which may be found at www.waterrating.gov.au.

Subsection 9(3) provides that the application must be made at least six weeks before the registration is due to expire, i.e before 5 December of the calendar year prior to the 22 January expiry date. This allows sufficient time for processing of all applications and fees prior to the day on which registrations commence i.e. 22 January. Without this, registration may not be continuous, in which case an application for registration of a new product will be required.
At the time of writing, it is intended there be a ‘renewal period’ from the start of the charging year (15 September) to 5 December annually, during which applications for renewal of registration are to be made.

Subsection 9(4) provides that a registrant seeking registration renewal must provide appropriate documentation to demonstrate compliance of the product with the WELS Standard. The person may either rely on documents submitted for an earlier registration period of that product or submit a new document, or documents (making clear which old documentation is being replaced). The latter course is appropriate where the product or WELS standard has changed such that the product’s performance in relation to the WELS standard could be affected, and so new test reports would be required. In circumstances where the WaterMark certification has expired, a new certificate would be required to support a registration application.

Section 10 sets out how fees payable for an application for registration of a product are to be calculated. It also sets out criteria for sets of minor products, described in 10(2), and which attract a discounted fee.

Subsection 10(1) provides that the fee payable for the first application by a person in a charging year is the fee set out in schedule 1 for the number of products that the person is applying to register in that application. For later applications by the same person in the same charging year the fee is the difference between the fee already paid and the fee payable for the total number of products applied to be registered that charging year.

Example: a person has registered 8 products, paying the tier 1 fee of $a. If they subsequently register one further product that year, there would be no additional fee, as the first tier covers 1-10 products. Adding 5 products, however, would put the number of registrations into the next tier, which costs $b. The additional fee payable for the 5 products would be $b minus $a.

Subsection 10(2) sets out the criteria for a ‘set of minor products’. The fee for a set of minor products is calculated as though the set is single product. The purpose of this fee reduction is to reduce the impact of WELS registration fees on the market viability and thus availability of products expected to sell fewer than 100 units per year. This will reduce any negative impact of the scheme on consumer choice, particularly for consumers requiring niche products.

A set of minor products is a group of any WELS products, regardless of product type or water consumption, that have the same registrant and brand name. For an application under section 8 evidence must be provided that fewer than 100 units of each product within the set are expected to be sold in Australia in a period of 12 months. For applications under section 9, evidence must be provided that fewer than 100 units of each product in the set are expected to be sold in Australia in a period of 12 months, as well as evidence of the actual number of sales for each product in the previous year.

10 (3) The reporting year may be set by the Regulator. Where not set by the Regulator it would ideally be as close as possible to the registration year starting 22 January, however, it must be consistent for that set of products from year to year.

The onus is on the person to satisfy the Regulator in relation to the application.

Subsection 10(4) sets out circumstances under which the Regulator may decide to waive or refund the whole or part of any fees, which include if the application for registration was refused; the fee was calculated incorrectly; and where a registration was cancelled or suspended in error; or it is otherwise appropriate in the circumstances.
Subsection 10(5) sets out that products for which the fee has been refunded or waived are not to be counted towards the total number of products for fee charging purposes in the same charging year.

Section 11 sets out how the Regulator may respond to an application for registration.

Subsection 11(1) requires that if an application is made the Regulator must register the product in relation to that applicant unless the Regulator refuses to register the product under subsection 11(2).

Subsection 11(2) provides that the Regulator may refuse to register a WELS product. The Regulator may do so if the application is not in accordance with sections 8 or 9, or a fee is payable and has not been paid, or the Regulator is dissatisfied with the accuracy of the information provided, or the product does not meet a minimum water efficiency or minimum performance requirement, or where a plumbing product is not WaterMark certified (subsection 7(2)).

Section 12 sets out the period of registration of products.

Subsection 12(1) provides that a registered WELS product is registered until the end of 21 January in the next charging year after the charging year in which the registration application was made. A charging year begins on 15 September. For renewed registrations (the majority of registrations) the registration period will therefore be exactly one year. For new registrations the registration period may be less or more than 12 months, depending on when in the charging year they are registered.

Examples:

(a) An application for registration of a new product is submitted between 22 January 2013 and 14 September 2013. The registration would commence on the day the Regulator decides to register the product, and expire at the end of 21 January 2014. Depending on the registration date, the registration would be for a period of 4 to 12 months.

(b) An application for registration of a new product is submitted between 15 September 2013 and 21 January 2014. The registration would commence when the Regulator decides to register the product, and expire at the end of 21 January 2015. Depending on the registration date, the registration would be for a period of 12 to 16 months.

(c) An application for renewal of the registration of a product is submitted between 15 September 2013 and 5 December 2013. The Regulator decides to register the product, but the new registration period would commence on 22 January 2014. This registration would expire at the end of 21 January 2015 and the registration period would be exactly 12 months.

Subsection 12(2) provides that where a registration of a product is cancelled, the registration ends on the date of cancellation. Subsection 12(2) also provides that a product is not taken to be registered while suspended.

Section 13 (1) sets out requirements that must be complied with for a product to remain registered.

Subsection 13(2) provides that a registrant must retain copies of all documents included in a registration application for a period of two years after the registration ends and make the documents available for inspection by the Regulator on the Regulator’s request.
Subsection 13(3) requires a registrant to notify the Regulator as soon as practicable if a product is altered so that it affects the performance of the product (including its water consumption) or the compliance of the product with the WELS standard. The time period is “as soon as practicable” so that the registration status of the changed product can be verified, and, if necessary, the registrant can apply to register the changed product as soon as possible. In this way early notifications to the WELS Regulator can reduce non-compliance with the Act.

Section 14 relates to the cancelling or suspending of registration.

Subsection 14(1) allows the Regulator to cancel or suspend registration of a product if the requirements in section 13 are not met; if the Regulator reasonably considers that information provided in the application for registration was not accurate at the time of the application; or if the information is no longer accurate because the product has changed.

Subsection 14(2) requires that the Regulator must cancel the registration of a WELS product if the product is not required to be registered and the registrant makes a written request for the cancellation. These circumstances could arise where the WELS standard is changed so that it excludes some types of products previously considered WELS products. As flow controllers are voluntarily registered, their registration is able to be cancelled at the request of the registrant.

Section 15 provides that the Regulator must keep a register of WELS products which is to be maintained electronically and must be made available for inspection on the Regulator’s website.

Section 16 provides that the Register may be altered by the Regulator to correct a clerical error or obvious defect.

Section 17(1) provides that a decision by the Regulator to refuse to waive or refund fees is reviewable for the purposes of Part 11 of the Act.

Section 17(2) clarifies that the applicant is the affected person for purposes of Part 11 of the Act.

Section 18 provides for the transfer of a registration (the review and notification rights in relation to a registration). This process is intended to cover cases where the registrant is changing from one person to another, for example when a registrant corporation has been bought by another and is changing names. Changing of contact details for a registrant is a separate, administrative matter.
Request by current person

Subsection 18(1)-(2) provides for the registrant to apply for another person (the transferee) to be treated as the registrant. The transferee, if they are agreeable, will be the new registrant and will receive information about the registration status of the products, including reminders to renew the registration at the appropriate time.

Request by new person

Subsection 18(3)-(4) provides that a person who is not the registrant may apply to be treated as the registrant. The Regulator may act on such a request if satisfied that doing so would allow for the proper administration of the WELS scheme.

Section 19 sets the fees payable in respect to registrations which have been mandatorily transferred from the old scheme arrangements to the new arrangements (i.e. those new arrangements established under the auspices of Schedule 1 of the Amendment Act). The fees payable are determined using the table in Schedule 1, with the total number of products transferred determining the fee payable.

Schedule 1 sets out the table of application fees which applies in relation to Section 10.
Statement of Compatability with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Water Efficiency Labelling and Standards Determination 2013

Overview of the Legislative Instrument

The Water Efficiency Labelling and Standards (WELS) scheme (the scheme) is established under the Water Efficiency Labelling and Standards Act 2005. Under the scheme, products must be registered and labelled to show their water efficiency when supplied. This Legislative Instrument sets out the registration requirements of the Scheme, covering matters such as applications for registration of products, conditions for registration, fees for registration of products, the period of registration and cancellation and suspension of registration.

Human rights implications

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

Conclusion

This Legislative Instrument is compatible with Australia’s human rights obligations as it does not raise any human rights issues.

Senator Don Farrell, Parliamentary Secretary for Sustainability and Urban Water