

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 96

Issued by the Minister for the Environment and Heritage

Water Efficiency Labelling and Standards Act 2005

Water Efficiency Labelling and Standards Regulations 2005

Subsection 77 (1) of the *Water Efficiency Labelling and Standards Act 2005* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or to give effect to the Act.

The Act establishes a framework for mandating water efficiency labelling and standards for a range of prescribed products. The Act, and regulations and determinations made under the Act, are intended to deliver a number of important water conservation benefits by enabling consumers to compare the water efficiency of WELS products using the information on labels affixed to those products. The labels will display a water efficiency 'star' rating to assist consumers make purchase decisions on a range of products. The Act will initially apply to washing machines, dishwashers, toilets, showers, taps, urinals, and flow control devices. Further products will be added to the Water Efficiency Labelling and Standards (WELS) Scheme under determinations made by the Minister for the Environment and Heritage following appropriate technical, scientific and regulatory impact assessments.

The WELS Scheme is intended to increase water conservation and to provide a strong market incentive for manufacturers to improve the water efficiency of products. A number of important water conservation outcomes from the Scheme are expected to be evident by 2021, when it is anticipated that water efficient appliances will have achieved a high level of market penetration.

The Regulations, together with Ministerial determinations, will facilitate the implementation of the Act. The Regulations provide that certain decisions of the Regulator (made under powers conferred by State and Territory legislation) are reviewable, detail persons taken to be the manufacturer of the product, establish a penalty infringement notice system, and detail the information that must be included on an identity card for WELS inspectors.

Details of the Regulations are set out in the Attachment.

The significant consultation on the establishment of the WELS Scheme was detailed in the Regulation Impact Statement tabled with the WELS Bill. Further consultation is not necessary as the Regulations are of a minor and machinery nature, and do not substantially alter existing arrangements.

The Act specifies no conditions that need to be met before the power to make Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Water Efficiency Labelling and Standards Regulations 2005

Details of the proposed Regulations are:

Part 1 Preliminary

Regulation 1 provides that the name of the Regulations is the *Water Efficiency Labelling and Standards Regulations 2005*.

Regulation 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Part 3 National WELS scheme

Regulation 3 defines “the Act” in these Regulations to mean the *Water Efficiency Labelling and Standards Act 2005*.

Regulation 4 provides that any decision which is 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 decision for the purposes of section 17 of the Act if the law under which the decision is made provides for review by the Administrative Appeals Tribunal.

Part 6 Applying for registration

Regulation 5 sets out the circumstances in which a person may make an application to the Regulator to be taken to be the manufacturer of a WELS product despite not having manufactured the WELS product, for the purposes of subsection 26 (1) and paragraph 31 (3) (b) of the Act. The Regulation sets out what the application must include and on what basis the Regulator must approve the application.

Part 8 Infringement notices

Regulation 6 describes the purpose of Part 8, comprising Regulations 6 to 18, which sets out a procedure by which a person who is alleged to have committed an offence against Part 7 of the Act may, as an alternative to prosecution, pay a infringement notice penalty (ie a monetary penalty or fine).

Subregulation 7 (1) prescribes that an inspector may serve an infringement notice if he or she has reasonable grounds for believing that the person has committed an offence under Division 2, 3 or 4 of Part 7 of the Act.

Subregulation 7 (2) provides that the financial penalty set out in an infringement notice will be one fifth of the maximum fine that a court could impose as a penalty for that offence.

Subregulation 7 (3) prescribes that the infringement notice must be served within 12 months of the alleged commission of the offence.

Regulation 8 requires the infringement notice to be in a form approved by the Regulator. It provides the basic information that the infringement notice must set out. It also requires the infringement notification to advise that a person may provide the Regulator with a statement of matters for consideration in relation to the alleged offence. The Regulator must consider such a statement of matters in deciding whether the infringement notice should be withdrawn under Regulation 11.

Regulation 9 describes the procedures by which a person may apply for an extension of time to pay an infringement notice penalty. It provides that the Regulator may grant or refuse an extension of time to pay an infringement notice penalty.

Regulation 10 provides that the Regulator may, if satisfied that it is proper to do so, make arrangements with an applicant for payment of an infringement notice penalty by instalments.

Regulation 11 provides a procedure for the Regulator to decide whether an infringement notice should be withdrawn if the Regulator is satisfied that it is proper to do so. The procedure includes certain things to be considered by the Regulator in making such a decision, namely the matters for consideration set out in the statement of matters (see Regulation 8), the circumstances of the offence, previous convictions for offences against the Act by the person mentioned in the infringement notice, previous infringement notices of the same kind, and any other matter the Regulator considers relevant. Regulation 11 also sets out requirements for written advice to be given to the person concerned following a decision. It provides for the infringement notice penalty to be refunded if the infringement notice has been withdrawn and the penalty has already been paid.

Regulation 12 provides that if the Regulator has decided not to withdraw an infringement notice, the person applying for the withdrawal must pay the infringement notice penalty within 28 days of receiving the notice of refusal.

Regulation 13 provides that the effect of the payment of an infringement notice is to discharge a person's liability in relation to the alleged offence, and to prevent further prosecution against the person for the alleged offence. It establishes that payment of an infringement notice is not an admission of guilt in relation to the alleged offence.

Regulation 14 provides that evidence of an admission made by a person in a statement of matters for consideration (see Regulations 8 and 11) is inadmissible in proceedings against the person for the alleged offence.

Regulation 15 provides that evidence that a person did not pay an infringement notice penalty, is not to be considered by the court in determining the penalty in relation to a conviction for the offence mentioned in that infringement notice.

Regulation 16 provides that, at a hearing of a prosecution for an offence mentioned in an infringement notice, certain certificates signed by the Regulator or delegate are evidence of the facts stated in those certifications. The certificates that may be signed by the Regulator (or delegate) relate to: the infringement notice having been served on the alleged offender; non-payment of the infringement notice; further time for payment of the infringement notice penalty being refused or granted; the withdrawal of the infringement notice on a specified date; and the infringement notice penalty not being paid in accordance with the notice or such further times as have been granted.

Regulation 17 provides that a cheque given to the Commonwealth in payment of all or part of an infringement notice penalty is not taken to be paid unless the cheque is honoured on presentation.

Regulation 18 provides that nothing in Part 8 of the Regulations requires that an infringement notice be served on a person suspected of having contravened a provision of the Act. It provides that nothing in Part 8 affects the liability of a person to be prosecuted for an alleged offence if an infringement notice is not served, or is served and withdrawn. Regulation 18 also provides that nothing in Part 8 limits the penalty that may be imposed by a court on a person convicted of an offence.

Part 9 WELS inspectors

Regulation 19 sets out the information that must be included on an identity card for WELS inspectors. It requires the following to appear on the front side the cards: the name of the Act, the inspector's name, the dates of issue and expiry of the card, a statement that the person is a WELS inspector, the name and position and signature of the person who issued the card, and a recent photograph of the inspector.

Regulation 19 also requires the reverse side of the card to include a statement that it is an offence for a person who ceases to be an inspector to fail to return the card to the Regulator.