



Water Efficiency Labelling and Standards Amendment Regulation 2013 (No. 1)¹

Select Legislative Instrument 2013 No. 21

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Water Efficiency Labelling and Standards Act 2005*.

Dated 1 March 2013

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

DON FARRELL
Parliamentary Secretary for Sustainability and Urban Water

1 Name of regulation

This regulation is the *Water Efficiency Labelling and Standards Amendment Regulation 2013 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Water Efficiency Labelling and Standards Regulations 2005*

Schedule 1 amends the *Water Efficiency Labelling and Standards Regulations 2005*.

Schedule 1 Amendments

(section 3)

[1] Regulation 3

insert

Note For the definitions of the following terms, see section 7 of the Act:

- civil penalty order
- civil penalty provision
- Regulator.

[2] Part 6

omit

[3] **Part 8**
substitute

Part 8 Infringement notices

Division 1 Overview

6 Simplified outline of this Part

The following is a simplified outline of this Part:

This Part deals with the use of infringement notices in the enforcement of provisions.

A person can be given an infringement notice in relation to a contravention of a provision that is enforceable under this Part.

A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for a contravention of a provision enforceable under this Part. If the person does not choose to pay the amount, proceedings can be brought against the person in relation to the contravention.

7 Enforceable provisions

The following provisions are *enforceable* under this Part:

- (a) an offence against the Act that is an offence of strict liability;
- (b) a civil penalty provision.

Division 2 Infringement notices

8 When infringement notice may be given

- (1) If the Regulator has reasonable grounds to believe that a person has contravened a provision enforceable under this Part, the Regulator may give the person an infringement notice for the alleged contravention.

Note For how a document is served on a person, see section 28A of the *Acts Interpretation Act 1901*.

- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.
- (4) The Regulator may give a person a single infringement notice relating to multiple contraventions of a single provision if:
 - (a) the provision requires the person to do a thing within a particular period or before a particular time; and
 - (b) the person fails or refuses to do that thing within that period or before that time; and
 - (c) the failure or refusal occurs on more than one day; and
 - (d) each contravention is constituted by the failure or refusal on one of those days.

Note For continuing offences, see subsection 4K (2) of the *Crimes Act 1914*.

9 Matters to be included in infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day on which the notice is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name and contact details of the person who gave the notice, and that the person is the Regulator for the purposes of issuing the notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for the contravention; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice; and

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- (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, (unless the notice is withdrawn):
 - (i) if the infringement notice relates to an offence provision that does not also constitute a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
 - (ii) if the infringement notice relates to an offence provision that can also constitute a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a civil penalty order will not be brought, in relation to the alleged contravention; or
 - (iii) if the infringement notice relates to a civil penalty provision that does not also constitute an offence provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
 - (iv) if the infringement notice relates to a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
 - (i) state that payment of the amount is not an admission of guilt or liability; and
 - (j) state that the person may apply, in writing, to the Regulator to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so:
 - (i) if the infringement notice relates to an offence provision that does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

- (ii) if the infringement notice relates to an offence provision that can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
 - (iii) if the infringement notice relates to a civil penalty provision that does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (iv) if the infringement notice relates to a civil penalty provision that can also constitute an offence provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; and
- (l) set out how the notice can be withdrawn; and
- (m) state that if the notice is withdrawn:
- (i) if the infringement notice relates to an offence provision that does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
 - (ii) if the infringement notice relates to an offence provision that can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
 - (iii) if the infringement notice relates to a civil penalty provision that does not also constitute an offence provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (iv) if the infringement notice relates to a civil penalty provision that can also constitute an offence provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; and
- (n) state that the person may make written representations to the Regulator seeking the withdrawal of the notice; and

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- (o) state any other information that the Regulator considers necessary.
 - (2) Unless another Act expressly provides otherwise, the amount to be stated in the notice for the purposes of paragraph (1) (f) for the alleged contravention of the provision by the person must be the lesser of:
 - (a) one-tenth of the maximum penalty that a court could impose on the person for that contravention; or
 - (b) 6 penalty units where the person is an individual, or 30 penalty units where the person is a body corporate.

10 Extension of time to pay

- (1) A person to whom an infringement notice has been given may apply, in writing, to the Regulator for an extension of the period referred to in paragraph 9 (1) (h).
- (2) If the application is made before the end of that period, the Regulator may, in writing, extend that period. The Regulator may do so before or after the end of that period.
- (3) If the Regulator extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 9 (1) (h) is taken to be a reference to that period so extended.
- (4) If the Regulator does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 9 (1) (h) is taken to be a reference to the period that ends on the later of the following days:
 - (a) the day that is the last day of the period referred to in paragraph 9 (1) (h);
 - (b) the day that is 7 days after the day the person was given notice of the Regulator's decision not to extend the period.
- (5) The Regulator may extend the period more than once under subregulation (2).

11 Payment by instalments

- (1) A person to whom an infringement notice has been given may apply, in writing, to the Regulator to make an arrangement for the infringement notice penalty to be paid by instalments.
- (2) The Regulator, if satisfied that in the circumstances it is proper to do so, may make the arrangement with the person (whether or not the period of 28 days after the date of service of the notice has ended).
- (3) The Regulator must:
 - (a) make or refuse to make an arrangement; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal—mention in the notice the reasons for refusal.
- (4) The person must pay the penalty:
 - (a) if an arrangement is made—in accordance with the arrangement; or
 - (b) if the decision is a refusal—before the end of the later of the following:
 - (i) 7 days after receiving notice of the refusal;
 - (ii) the 28 day period.

12 Withdrawal of infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the Regulator seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The Regulator may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).

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- (3) When deciding whether or not to withdraw an infringement notice (the *relevant infringement notice*), the Regulator:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the Regulator; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision enforceable under this Part that is included in the same Act or a legislative instrument as the provision in relation to which the infringement notice is given;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision enforceable under this Part if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (iv) any other matter the Regulator considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that:
 - (i) if the provision is an offence provision and does not also constitute a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

- (ii) if the provision is an offence provision and can also constitute a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a civil penalty order may be brought, in relation to the alleged contravention; or
- (iii) if the provision is a civil penalty provision—proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
 - (a) the Regulator withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

Representations not admissible in evidence

- (6) Information that the person gives to the Regulator in the course of making representations under this regulation is not admissible in evidence against the person in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

13 Effect of payment of amount

- (1) If a person to whom an infringement notice is given pays the amount stated in the notice before the end of the period referred to in paragraph 9 (1) (h), the person's liability in relation to the alleged contravention is discharged as follows:
 - (a) if the infringement notice related to an offence provision that does not also constitute a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and

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- (b) if the infringement notice related to an offence provision that can also constitute a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a civil penalty order may not be brought, in relation to the alleged contravention; and
 - (c) if the infringement notice related to a civil penalty provision that does not also constitute an offence provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
 - (d) if the infringement notice related to a civil penalty provision that can also constitute an offence provision—proceedings seeking a civil penalty order may not be brought in relation to the alleged contravention; and
 - (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
 - (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.
- (2) Subregulation (1) does not apply:
- (a) if the notice has been withdrawn; or
 - (b) to a person who makes an arrangement to pay the infringement notice penalty by instalments, if the person does not make payments in accordance with the arrangement.

14 Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a provision enforceable under this Part; or
- (b) affect the liability of a person for an alleged contravention of a provision enforceable under this Part if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision enforceable under this Part; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision enforceable under this Part.

15 Evidence for hearing

- (1) At a proceeding for a contravention of a provision mentioned in an infringement notice, any of the following certificates, if signed by the Regulator or a delegate, is evidence of the facts stated in the certificate:
 - (a) a certificate stating that the notice was served on a person;
 - (b) a certificate stating that the infringement notice penalty has not been paid in accordance with this Part;
 - (c) a certificate stating that the notice was withdrawn on a day specified in the certificate;
 - (d) a certificate stating that:
 - (i) under regulation 10, a further period for payment of the infringement notice penalty was refused; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (e) a certificate stating that:
 - (i) for regulation 11, the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
 - (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.
- (2) A certificate that purports to have been signed by the Regulator or a delegate is taken to have been signed by that person unless the contrary is proved.

Note

- 1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.