

EXPLANATORY STATEMENT

Issued by the Parliamentary Secretary for the Environment and Urban Water

Water Efficiency Labelling and Standards Act 2005

Water Efficiency Labelling and Standards Determination 2013 (No. 2)

The *Water Efficiency Labelling and Standards Act 2005* (the WELS Act) establishes the WELS scheme which applies national water efficiency labelling and minimum performance standards for prescribed water-use products or water-saving products. This delivers water conservation benefits by enabling consumers to choose between products based on their water efficiency.

The WELS scheme is a national regulatory scheme administered by the Australian Government on behalf of participating States and Territories. It is a cooperative arrangement with supporting State and Territory legislation.

Subsection 18(1) of the WELS Act provides that the Commonwealth Minister (the Minister) may determine, in writing, that water-use products or water-saving products of a specified kind are 'WELS products'. A determination made under subsection 18(1) must set out, or incorporate by reference, the WELS standard for those products (see subsection 18(2) of the WELS Act). To do this the Minister must have agreement to the terms of the determination from a majority of the participating States and Territories (see subsection 18(4) of the WELS Act). This State and Territory consultation process has been undertaken and majority agreement reached.

Subsection 19(1) of the WELS Act provides that the WELS standard must set criteria for rating WELS products in relation to either their water efficiency or general performance, or both. It must also set out criteria in relation to labelling WELS products. The WELS standard may also require WELS products to be registered for specified supplies of the product (see subsections 19(2) – (3A) of the WELS Act).

Subsection 26(1) of the WELS Act provides that the Minister must, by legislative instrument, formulate a scheme relating to the registration of WELS products. Subsection 26(2) sets out that the scheme may make provision for various matters including (but not limited to) applications for registration of WELS products (including renewal of registration), registration fees and the period of registration.

The *Water Efficiency Labelling and Standards Determination 2013 (No. 2)* (the Determination) is made under sections 18, 19 and 26 of the WELS Act. The Determination sets out:

- the water-use or water-saving products that are WELS products
- the WELS standard and WELS standard requirements
- application processes for registering new WELS products or renewing registration for currently registered WELS products

- waiver and refund of fees
- registration of products
- the register of WELS products.

Details of the Determination are set out in the Attachment.

In accordance with subsection 18(4) and 26 (4) of the the WELS Act, the Commonwealth provided each participating State and Territory with a copy of the draft Determination for consultation and it was agreed by a majority of the States and Territories.

The Determination is a Legislative Instrument for the purposes of the *Legislative Instruments Act 2003* (Cth).

The Determination commences on 15 September 2013.

**Details of the *Water Efficiency Labelling and Standards Determination 2013*
(No. 2)**

Part 1 – Preliminary

Section 1 – Name of the determination

Section 1 of the Determination provides that the name of the Determination is the *Water Efficiency Labelling and Standards Determination 2013 (No. 2)* (the Determination).

Section 2 – Commencement

Section 2 provides that the Determination takes effect on 15 September 2013.

Section 3 – Authority

Section 3 provides that the Determination is made under sections 18, 19 and 26 of the WELS Act.

Section 4 – Repeal

Section 4 repeals the *Water Efficiency Labelling and Standards Determination 2013*.

Section 5 – Definitions

Section 5 defines a number of terms used in the Determination including,

“AS/NZS 3500” and “AS/NZS 6400”.

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 paragraph 19 (3A)(a) of the WELS Act.

AS/NZS 6400, however, is called up as a specific version of the document, reflecting standard Commonwealth practice and ensuring that the Minister is able to define the registration elements of the WELS scheme, rather than their being set by the author of AS/NZS 6400, which is a non-government body.

Part 2 – Determination and registration of WELS products

Section 6 – Determination of WELS products

Section 6 provides that showers, dishwashers, clothes washing machines, lavatory, urinal and tap equipment and flow controllers are WELS products if the WELS standard applies to them. It may be necessary to refer to the WELS standard, and AS/NZS 6400 or other Australian Standards referenced by AS/NZS 6400 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 7 – WELS Standard

Section 7 provides that the WELS standard for products listed in section 6 of the Determination consists of AS/NZS 6400 and requirements outlined in section 8 of the Determination.

Section 8 – WELS standard requirements

Section 8 sets out the WELS standard requirements, as follows:

Subsection 8(1) provides that a product listed in paragraphs 6(a) to (g) of the Determination (i.e. all of the products) must be registered for supply as a new product for any purpose. Previously flow controllers were able to be registered on a voluntary basis.

Subsection 8(2) provides that a product mentioned in paragraphs 6(a) (showers), 6(d) (lavatory equipment) and 6(e)-(g) (lavatory, urinal and tap equipment) of the Determination that may be used or installed in a plumbing installation must comply with either 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 plumbing products when installed. States and Territories are currently in the process of changing the way WaterMark certification is made a requirement, by moving to reference the Plumbing Code (Volume 3 of the National Construction Code) rather than AS/NZS 3500.

The 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 reliant solely on its own water tank). Therefore, WaterMark certification is not required for WELS registration of products that are intended for use solely in a non-reticulated system.

Subsection 8(3) provides that a product listed in section 6 of the Determination must be WELS-labelled for supply as a new product for any purpose.

Section 9 – Application for registration

Section 9 sets out requirements for applications for registration of new WELS products. New products are those which are not currently registered, including those where the registration has expired or been cancelled.

Subsection 9(1) sets out the persons who may apply in writing to the Regulator to register a WELS product. They are:

- the manufacturer of the product (paragraph 9(1)(a));
- the importer of the product, provided the importer has the written agreement of the manufacturer that the importer will make the application (paragraph 9(1)(b));
- another person, if the person has the written agreement of the manufacturer allowing that person to make the application. The Regulator must also be satisfied that registering the product in relation to the person who is not the manufacturer of

that product would allow the proper administration of the WELS Act (paragraph 9(1)(c));

- another person, if the Regulator is satisfied that the person is appropriately connected with the product and that registering the product in relation to the person would allow the proper administration of the WELS Act (paragraph 9(1)(d)).

Subsection 9(2) provides that the application to register a new WELS product must be made in a form approved by the Regulator. The approved form can be found at the WELS website (www.waterrating.gov.au).

Subsection 9(3) sets out that various test reports and an application fee must accompany an application. Under paragraphs (9)(3)(a)-(b) of the Determination test reports must be prepared by a laboratory approved by the Regulator and evaluate compliance of the product with the water efficiency requirements and performance requirements in the WELS standard for the product.

Certification reports prepared by conforming assessment bodies on the performance requirements in the WELS standard for the product can also be provided under paragraph (9)(3)(b). A conformity assessment body must be approved by the joint government appointed accreditation body for Australia and New Zealand, or international equivalents.

Subsection 9(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 10 – Application for renewal of registration

Section 10 sets out the requirements for applications for renewal of registration of WELS products currently registered.

Subsection 10(1) provides that the registrant for a registered WELS product may submit a written application to the Regulator to renew the registration for a further period.

Subsection 10(2) provides that the application to register a WELS product for a further period must be made in a form approved by the Regulator. The approved form can be found at www.waterrating.gov.au.

Subsection 10(3) provides that the application to renew a registration may be made only during the period beginning on 15 September and ending on 5 December in the charging year in which the registration is due to end. (Subsection 13(1) provides that a registered WELS product is registered until 21 January in the charging year after the charging year in which the application was made).

This allows sufficient time for processing of all applications and fees prior to the day on which renewal registrations commence i.e. 22 January. Applications for renewal of registration not submitted between the 15 September and 5 December will need to be in the form of a registration of a new product.

Subsection 10(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 documents are 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.

Subsection 10(5) provides that an application must be accompanied by an application fee. The amount of the fee is determined in accordance with the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*.

Section 11 – Waiver and refund of fees

Subsection 11(1) provides that the Regulator may waive or refund an application fee, or part of an application fee, if:

- the application for registration was refused; or
- the application fee was calculated incorrectly; or
- the application fee should not have been charged; or
- a registration was cancelled or suspended in error; or
- the application relates to a performance of an already registered product under a different water pressure; or
- the product is not registered (for example, the product is not a WELS product); or
- where the Regulator considers that it is otherwise appropriate in the circumstances.

Subsection 11(2) 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 12 – Registration of products

Subsection 12(1) provides that if an application is made for registration of a WELS product, the Regulator must register the product in relation to that applicant unless the Regulator refuses to register the product under subsection 12(2).

Subsection 12(2) provides that the Regulator may refuse to register a WELS product if:

- the application is not in accordance with sections 9 or 10 of the Determination; or
- the application fee is not paid and has not been waived; or
- the Regulator is not satisfied 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 (see subsection 8(2)).

Section 13 - Period of registration

Subsection 13(1) provides that a registered WELS product is registered up to and including 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 WELS product is submitted between 22 January 2014 and 14 September 2014. The registration would commence on the day the Regulator decides to register the product, and expire on 21 January 2015. 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 WELS 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 on 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 on 21 January 2015 and the registration period would be exactly 12 months.

Subsection 13(2) provides that where a registration of a product is cancelled, the registration ends on the date of cancellation and if the registration is suspended the product is taken not to be registered while the suspension is in force.

Section 14 – Requirements for product to remain registered

Section 14 (1) provides that Section 14 sets out requirements that must be complied with in order for a product to remain registered.

Subsection 14(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 14(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 use) or the compliance of the product with the WELS standard for the product.

The time period “as soon as practicable” is specified so that the registration status of the changed product can be verified, and, if necessary, the registrant can apply to register the changed product quickly. Early notifications to the WELS Regulator will help reduce non-compliance with the Act.

Section 15 - Cancelling or suspending registration

Section 15 allows the Regulator to cancel or suspend registration of a product if the requirements in section 14 are not complied with or if the Regulator is satisfied that the information provided in the application for registration was not accurate at the time of the application, or if the information is no longer accurate.

Section 16 - Reviewable decisions

Subsection 16(1) provides that a decision by the Regulator to refuse to waive or refund fees is a reviewable decision for the purposes of Part 11 of the WELS Act.

Subsection 16(2) provides that the applicant is the affected person for the purposes of Part 11 of the WELS Act.

Part 3 – Register of WELS products

Section 17 – Register of WELS products

Section 17 provides that the Regulator must keep a register of WELS products. This register must be maintained by electronic means and it must be made available for inspection on the Regulator’s website.

Section 18 – Correction of Register

Section 18 provides that the Register may be altered by the Regulator to correct a clerical error or obvious defect.

Section 19 – Change of registrant

Section 19 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 19(1) allows the registrant for a registered WELS product to make a written request to the Regulator for another person to become the registrant.

Subsection 19(2) allows the Regulator to accept that other person as the registrant for the product if the Regulator is satisfied that the other person has agreed to become the registrant.

Request by *new* person

Subsection 19(3) allows a person who is not the registrant to make a written request to the Regulator to become the registrant for a registered WELS product.

Subsection 19(4) provides the Regulator may accept the new person as the registrant for the product if the Regulator is satisfied that:

- the current registrant for the product has agreed to the transfer; or
- accepting the new person as the registrant would allow the proper administration of the WELS Act in relation to the product.

Statement of Compatibility with Human Rights

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

Water Efficiency Labelling and Standards Determination 2013 (No. 2)

Overview of the Legislative Instrument

The Water Efficiency Labelling and Standards (WELS) scheme (the WELS 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, 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.

The Honourable Amanda Rishworth MP, Parliamentary Secretary for the Environment and Urban Water