



Australian Capital Territory

Water Efficiency Labelling and Standards Act 2005

A2005-10

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Australian Capital Territory

Water Efficiency Labelling and Standards Act 2005

A2005-10

An Act to provide for water efficiency labelling and the making of water efficiency standards, and for related purposes.

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Water Efficiency Labelling and Standards Act 2005*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Note 4 This section differs from the Commonwealth Act, s 2.

3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve water supplies by reducing water consumption;
- (b) to provide information for purchasers of water-use and water-saving products;
- (c) to promote the adoption of efficient and effective water-use and water-saving technologies.

4 Act to bind the Crown

Note The Commonwealth Act includes a provision binding the Crown. The provision is unnecessary in the ACT (see Legislation Act, s 121).

5 External territories

Note The Commonwealth Act includes a provision extending that Act to every external territory other than Norfolk Island.

5A Numbering

- (1) To maintain consistent numbering between this Act and the Commonwealth Act—
 - (a) if the Commonwealth Act contains a section that is not needed in this Act—the provision number and heading to the section appearing in the Commonwealth Act are included in this Act despite the omission of the body of the section; and
 - (b) if this Act contains a section that is not included in the Commonwealth Act—the section is numbered to maintain consistency in numbering between sections common to both Acts.
- (2) A provision number and heading mentioned in subsection (1) (a) form part of this Act.
- (3) If a provision of this Act (other than a section) is numbered differently from the equivalent provision of the Commonwealth Act, the provision of this Act may be referred to using the number of the equivalent provision of the Commonwealth Act.

Note 1 A note appears under each heading of a kind mentioned in s (1) (a) describing the omitted section of the Commonwealth Act.

Note 2 A note appears under each section of a kind mentioned in s (1) (b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.

Note 3 This section does not appear in the Commonwealth Act.

5B Notes

A note included in this Act is explanatory and is not part of this Act.

Note 1 See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

Note 2 This section does not appear in the Commonwealth Act.

6 Offences against Act—application of Criminal Code etc

Other legislation applies to offences against this Act.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Note 3 This section differs from the Commonwealth Act, s 6.

Part 2 Interpretation

7 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*corresponding law*—see section 12.’ means that the term ‘corresponding law’ is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

Note 3 This section differs from the Commonwealth Act, s 7. The definitions in that section are located in the dictionary.

Part 3 National WELS scheme

8 WELS scheme to be national cooperative scheme

It is the intention of the Legislative Assembly that this Act form a part of a cooperative scheme between the Commonwealth and the States and Territories to provide for national water efficiency labelling and standards.

9 Application of Act

Note The Commonwealth Act includes a provision about the application of that Act.

10 Relationship to other territory laws

This Act is additional to, does not limit, and is not in substitution for, any other territory law.

Note This section differs from the Commonwealth Act, s 10.

11 State and territory laws may operate concurrently

Note The Commonwealth Act includes a provision allowing state and territory laws to operate concurrently with that Act.

12 Meaning of *corresponding law*

In this Act:

corresponding law means—

- (a) the Commonwealth Act; or
- (b) a corresponding State-Territory law within the meaning of the Commonwealth Act, other than this Act.

Note 1 This section differs from the Commonwealth Act, s 12.

Note 2 See the Legislation Act, s 102 for the interpretation of references in this Act to other laws.

13 Commonwealth consent to conferral of functions etc on regulator or inspectors by corresponding laws

Note The Commonwealth Act, s 13 provides Commonwealth consent to the giving of functions or powers, or the imposing of duties, on the regulator or WELS inspectors by corresponding State-Territory laws.

14 How duty is imposed by corresponding laws

Note The Commonwealth Act, s 14 deals with the imposing of duties on the regulator or WELS inspectors by corresponding State-Territory laws.

15 When a corresponding State-Territory law imposes a duty

Note The Commonwealth Act, s 15 provides a definition of the term *imposes a duty* for that Act, s 13 and s 14.

16 No doubling-up of liabilities

If a person has paid, or been ordered to pay, a pecuniary penalty under the Commonwealth Act, the person is not liable to a pecuniary penalty under this Act in relation to the same conduct.

Note The Commonwealth Act, s 16 also includes a provision preventing a person being punished for an offence against this Act and the Commonwealth Act. The provision is unnecessary in the ACT (see Legislation Act, s 191).

17 Review of decisions under Act

- (1) Application may be made to the Commonwealth administrative appeals tribunal for review of a reviewable decision if the decision is declared by regulation under the Commonwealth Act to be a reviewable State-Territory decision for the Commonwealth Act, section 17.
- (2) The Commonwealth Administrative Appeals Tribunal Act (other than part 4A) applies as a territory law in relation to reviewable State-Territory decisions.
- (3) For this section, a reference in a provision of the Commonwealth Administrative Appeals Tribunal Act (as that provision applies as a

territory law) to all or any part of that Act, part 4A is taken to be a reference to all or any part of that part as it has effect as a law of the Commonwealth.

Note 1 A reference to the Commonwealth Administrative Appeals Tribunal Act includes a reference to any regulation in force under that Act from time to time (see Legislation Act, s 102 and s 104).

Note 2 This section differs from the Commonwealth Act, s 17.

Part 4 WELS products and WELS standards

18 WELS products

Note The Commonwealth Act, s 18 allows the Commonwealth Minister to determine that water-use or water-saving products are WELS products and set out the WELS standard for the products.

19 WELS standards

Note The Commonwealth Act, s 19 states what must be set out in WELS standards and allows WELS standards to require products to be registered, and registered products to be WELS-labelled, for the purposes of specified supplies of the product.

20 Meaning of *WELS-labelled*

- (1) A product is *WELS-labelled* if it is labelled in accordance with requirements set out in the WELS standard for products of that kind.
- (2) The requirements may relate to 1 or more of the following:
 - (a) the characteristics, contents, placement and quality of labels attached to products or displayed on product packaging;
 - (b) documents or other material used for, or provided in relation to, the supply of the product;
 - (c) advertising the product.

Part 5 WELS regulator

21 The regulator

Note The Commonwealth Act, s 21 appoints the Secretary of the Commonwealth department that deals with the matters to which the Commonwealth Act relates as the regulator.

22 Functions of regulator

The regulator has the following functions:

- (a) to administer the WELS scheme;
- (b) to undertake or commission research in relation to water-use and water-saving products;
- (c) to provide advice in relation to determining that water-use or water-saving products are WELS products;
- (d) to undertake or commission research in relation to WELS standards;
- (e) to assist in the development of WELS standards;
- (f) to provide information and advice to the Minister about the operation of WELS standards;
- (g) to provide information and advice about the operation of the WELS scheme to—
 - (i) the Minister; and
 - (ii) the chief executive; and
 - (iii) the public;
- (h) to undertake or commission research in relation to the effectiveness of WELS standards in reducing water usage;

- (i) any other functions given to the regulator under this Act or any other law.

Note This section differs from the Commonwealth Act, section 22.

23 Powers of regulator

Note The Commonwealth Act, s 23 gives the regulator powers to carry out the regulator's functions. The provision is unnecessary in the ACT (see Legislation Act, s 196).

24 Arrangements with other agencies

The regulator may make an arrangement with an administrative unit, territory authority or territory instrumentality for the services of officers or employees of the agency to be made available to assist the regulator in the exercise of the functions of the regulator.

Note This section differs from the Commonwealth Act, s 24.

25 Delegation

- (1) The regulator may delegate the regulator's functions under this Act to any of the following:
 - (a) a public employee;
 - (b) an officer or employee of a Commonwealth agency;
 - (c) an officer or employee of an agency of a State or another Territory.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (2) However, the regulator must not delegate a function under subsection (1) to a public employee without the Territory's agreement.
- (3) In exercising a function under a delegation, the delegate must comply with any directions of the regulator.

Note This section differs from the Commonwealth Act, s 25.

Part 6 Registration of WELS products

26 Applying for registration

- (1) The manufacturer of a WELS product may apply in writing to the regulator for registration of the product.

Note 1 A WELS standard may require products to be registered for the purposes of specified supplies (see Commonwealth Act, s 19 (2)). It is an offence to supply an unregistered product if the product is required to be registered for the purposes of the supply (see this Act, s 33).

However, if a WELS standard permits a product to be registered for the purposes of specified supplies and such a product is registered despite not being required to, WELS-labelling requirements may apply (see Commonwealth Act, s 19 (4)). It is an offence to supply a product that is not WELS-labelled if WELS-labelling requirements apply (see this Act, s 34).

Note 2 The Criminal Code, pt 3.4 provides offences in relation to false or misleading statements.

- (2) A person who is not the manufacturer of a WELS product is taken to be the manufacturer of the product for subsection (1) and section 31 (3) (b) if the person would be taken to be the manufacturer of the product for the Commonwealth Act, section 26 (1) and section 31 (3) (b).

Note This section differs from the Commonwealth Act, s 26.

27 Documentation etc to be provided with application for registration

- (1) An application for registration of a WELS product must be made in the manner and form specified in a written determination by the Commonwealth Minister under the Commonwealth Act, section 27 (1) and must be accompanied by—
- (a) any documentation (including test results and sample labels) specified in the determination; and

(b) any registration fee specified in the determination.

- (2) A determination mentioned in subsection (1) may also specify conditions that must be complied with for a product to remain registered.

Note This section differs from the Commonwealth Act, s 27.

28 Registration of products

- (1) If—
- (a) an application is made for registration of a WELS product; and
 - (b) the regulator does not refuse to register the product under section 29;
- the regulator must, by notice published in the Commonwealth gazette, register the product.
- (2) The regulator must give the applicant written notice of the registration or refusal.
- (3) The regulator is taken to have refused to register the product if, at the end of the 3-month period beginning on the day the application is made—
- (a) a notice registering the product has not been published in the Commonwealth gazette; and
 - (b) the applicant has not been notified, under subsection (2), that the regulator has refused to register the product.

29 Grounds for refusing to register

The regulator may refuse to register a WELS product if—

- (a) the application is not made in accordance with the applicable determination under the Commonwealth Act, section 27 (1); or
- (b) the regulator is not satisfied that all of the information provided in the application is accurate; or

- (c) the product does not satisfy a minimum water efficiency or minimum general performance requirement that the product is required to satisfy by the WELS standard for products of that kind.

30 Period of registration

- (1) Unless subsections (2) and (3) apply, a WELS product that is registered remains registered until the first of the following happens:
 - (a) the registration is cancelled or suspended under section 31;
 - (b) the 5-year period beginning on the day the product is registered ends.
- (2) Subsection (3) applies to a WELS product if—
 - (a) the product is registered under a WELS standard (the *first WELS standard*); and
 - (b) the first WELS standard is replaced.
- (3) The product mentioned in subsection (2) remains registered under the first WELS standard until the first of the following happens:
 - (a) the product is registered under a WELS standard other than the first WELS standard;
 - (b) the 1-year period beginning on the day the first WELS standard was replaced ends.
- (4) If the Commonwealth Minister, in writing, determines that, for specified purposes, the 1-year period mentioned in the Commonwealth Act, section 30 (2) (d) is extended by a further specified period, the 1-year period mentioned in subsection (3) (b) is extended for the same purposes by the same further period.

Note This section differs from the Commonwealth Act, s 30.

31 Cancellling or suspending registration

- (1) The regulator may, by notice published in the Commonwealth gazette, cancel or suspend the registration of a WELS product if—
 - (a) registration conditions are not complied with (see section 27 (2)); or
 - (b) the regulator is satisfied that information provided in the application for registration of the product—
 - (i) was not accurate at the time of the application; or
 - (ii) is no longer accurate because changes have been made to the product.
- (2) If the regulator cancels or suspends the registration of a WELS product under subsection (1), the regulator must give written notice of the cancellation or suspension to the person on whose application the product was registered.
- (3) The regulator must, by notice published in the Commonwealth gazette, cancel the registration of a WELS product if—
 - (a) the WELS standard included in the most recent determination made under the Commonwealth Act, section 18 (1) that relates to products of that kind does not require the product to be registered; and
 - (b) the manufacturer on whose application the product was registered makes a written request to the regulator for the registration to be cancelled.

Part 7 Offences relating to supply of WELS products

Division 7.1 Applicable WELS standards

32 Meaning of *applicable WELS standard*

- (1) The *applicable WELS standard* for a WELS product that is registered is the WELS standard under which the product is registered.
- (2) The *applicable WELS standard* for a WELS product that is not registered is the WELS standard included in the most recent determination made under the Commonwealth Act, section 18 (1) that relates to products of that kind.

Division 7.2 Registration and labelling

33 Registration requirement

- (1) A person commits an offence if—
 - (a) the person supplies a WELS product; and
 - (b) the applicable WELS standard requires the product to be registered for the purposes of the supply; and
 - (c) the product is not registered.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

34 Labelling registered products

- (1) A person commits an offence if—
 - (a) the person supplies a WELS product; and

- (b) the product is registered; and
- (c) the applicable WELS standard requires registered products to be WELS-labelled for the purposes of the supply; and
- (d) the product is not WELS-labelled.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

Division 7.3 Minimum efficiency and performance requirements

35 Minimum water efficiency—products required to be registered

- (1) A person commits an offence if—
 - (a) the person supplies a WELS product; and
 - (b) the applicable WELS standard requires the product—
 - (i) to be registered for the purposes of the supply; and
 - (ii) to comply with minimum water efficiency requirements for the purposes of the supply; and
 - (c) the product does not comply with those minimum water efficiency requirements.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

36 Minimum general performance—products required to be registered

- (1) A person commits an offence if—
 - (a) the person supplies a WELS product; and
 - (b) the applicable WELS standard requires the product—

- (i) to be registered for the purposes of the supply; and
- (ii) to comply with minimum general performance requirements for the purposes of the supply; and
- (c) the product does not comply with the minimum general performance requirements.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

Division 7.4 Misuse of WELS standards and offences about information

37 Misuse of WELS standards and information

- (1) A person commits an offence if the person—
 - (a) supplies a WELS product; and
 - (b) uses a WELS standard, or information included in a WELS standard, for, or in relation to, the supply of the product; and
 - (c) uses the standard, or information, in a way that is inconsistent with the standard.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

Note Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.

38 Information inconsistent with WELS standards

- (1) A person commits an offence if—
 - (a) the person uses information for, or in relation to, the supply of a WELS product; and

- (b) the information is inconsistent with the information contained in the applicable WELS standard for the product.

Maximum penalty: 60 penalty units.

- (2) An offence against this section is a strict liability offence.

Note Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.

39 Using information in supply of products

- (1) For section 37 and section 38, information is used for, or in relation to, the supply of a product if the information is given on, or by—
 - (a) a label attached to the product; or
 - (b) the packaging in which the product is supplied; or
 - (c) any document or other material used for, or provided in relation to, the supply of the product; or
 - (d) any advertising that relates to the product.
- (2) Subsection (1) does not limit the general meaning of words used in section 37 and section 38.

Part 8 Other enforcement provisions

Division 8.1 Infringement notices

40 Infringement notices

Note The Commonwealth Act includes a provision authorising the regulations to provide for infringement notices. The provision is unnecessary in the ACT (see *Magistrates Court Act 1930*, pt 3.8).

Division 8.2 Publicising offences

41 Regulator may publicise offences

- (1) The regulator may publicise, in any way the regulator considers appropriate, an offence against this Act for which a person has been convicted.
- (2) This section does not—
 - (a) limit the regulator's powers to publicise an offence against this Act; or
 - (b) prevent anyone else from publicising an offence against this Act; or
 - (c) affect any obligation (however imposed) on anyone to publicise an offence against this Act.

Division 8.3 Enforceable undertakings

42 Acceptance of undertakings

- (1) The regulator may accept a written undertaking given by a person in relation to a matter relating to—
 - (a) complying with a WELS standard; or
 - (b) complying with a registration condition (see section 27 (2)).

- (2) The person may withdraw or vary the undertaking at any time, but only with the regulator's consent.

43 Enforcement of undertakings

- (1) If the regulator considers that a person who gave an undertaking under section 42 has breached any of its terms, the regulator may apply to the Supreme Court for an order under subsection (2).
- (2) If the Supreme Court is satisfied that the person has breached the undertaking, the court may make 1 or more of the following orders:
- (a) an order directing the person to comply with the undertaking or any provision of the undertaking;
 - (b) an order directing the person to pay to the Territory an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate anyone else who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Note The Commonwealth Act, s 43 gives a similar power to enforce undertakings to the Federal Court.

Division 8.4 Injunctions

44 Injunctions

- (1) If a person has engaged, is engaging or is proposing to engage in conduct that was, is or would be an offence against this Act, the Supreme Court may, on the regulator's application, grant an injunction—
- (a) restraining the person from engaging in the conduct; or
 - (b) requiring the person to do anything.

- (2) On an application, the Supreme Court may grant an injunction by consent of all parties to the proceeding, whether or not the court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct that was, is or would be an offence against this Act.
- (3) The Supreme Court may grant an interim injunction pending its decision on an application.
- (4) The Supreme Court must not require the regulator or anyone else to give an undertaking about damages as a condition of granting an interim injunction.
- (5) The Supreme Court may discharge or amend an injunction it has granted.
- (6) The power to grant or amend an injunction restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the Supreme Court that the person intends to engage again, or to continue to engage, in the conduct; and
 - (b) whether or not the person has previously engaged in the conduct.
- (7) The power to grant or amend an injunction requiring a person to do anything may be exercised—
 - (a) whether or not it appears to the Supreme Court that the person intends to fail again, or to continue to fail, to do the thing; and
 - (b) whether or not the person has previously failed to do the thing and whether or not there is an imminent danger of substantial damage to anyone if the person fails to do the thing.

Note The Commonwealth Act, s 44 gives a similar power to grant injunctions to the Federal Court.

Part 9 WELS inspectors

Division 9.1 Appointment of WELS inspectors

45 Regulator may appoint WELS inspectors

- (1) The regulator may, in writing, appoint any of the following as a WELS inspector:
 - (a) a public employee;
 - (b) an officer or employee of a Commonwealth agency.
- (2) However, the regulator must not appoint a public employee as a WELS inspector without the Territory's agreement.
- (3) A WELS inspector must comply with any direction of the regulator in exercising the inspector's functions.

Note 1 The Criminal Code, pt 3.8 provides offences in relation to causing harm to, and impersonation and obstruction of, a territory public official.

Note 2 This section differs from the Commonwealth Act, s 45.

46 Identity cards

- (1) The regulator must issue an identity card to each WELS inspector.
- (2) The identity card must—
 - (a) be in the form prescribed by the regulations made under the Commonwealth Act; and
 - (b) contain a recent photograph of the WELS inspector.
- (3) A person commits an offence if—
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be a WELS inspector; and

- (c) the person does not return the person's identity card to the regulator as soon as practicable.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) A WELS inspector must carry his or her identity card at all times when exercising functions as a WELS inspector.
- (6) A WELS inspector is not entitled to exercise any functions under this part in relation to premises if—
 - (a) the occupier of the premises has required the WELS inspector to produce his or her identity card for inspection by the occupier; and
 - (b) the WELS inspector fails to comply with the requirement.

Note This section differs from the Commonwealth Act, s 46.

Division 9.2 Powers of WELS inspectors

47 Purposes for which functions can be exercised

A WELS inspector may exercise the functions set out in this division—

- (a) to decide whether a person is complying with this Act; or
- (b) to investigate a possible offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

48 Inspection powers—public areas of WELS business premises

- (1) For the purposes set out in section 47, a WELS inspector may do 1 or more of the following in a public area of WELS business premises when the premises are open to the public:
 - (a) inspect WELS products;
 - (b) buy any WELS product that is available for sale;
 - (c) inspect or collect written information, advertising or any other document that is available, or made available, to the public;
 - (d) discuss product features with anyone;
 - (e) observe practices relating to the supply of products.
- (2) Subsection (1) does not affect any right of the occupier of the premises to refuse to allow a WELS inspector to enter, or remain on, the premises.

49 Inspection powers—with consent

- (1) A WELS inspector may enter WELS premises and exercise the powers set out in subsection (3) if the occupier of the premises consents to the entry and the exercise of the powers.
- (2) Before obtaining consent, the WELS inspector must tell the occupier that the occupier may refuse consent, or withdraw consent at any time.
- (3) For the purposes set out in section 47, a WELS inspector who enters WELS premises in accordance with subsection (1) may do 1 or more of the following:
 - (a) search the premises and anything (including a vehicle) on the premises;
 - (b) inspect, examine, take measurements of or conduct tests on anything on the premises;

- (c) take photographs, make video or audio recordings or make sketches of the premises or anything on the premises;
- (d) inspect any book, record or document on the premises;
- (e) take extracts from or make copies of any book, record or document on the premises;
- (f) take onto the premises the equipment and materials that the WELS inspector reasonably needs to exercise powers in relation to the premises;
- (g) operate equipment on the premises for the purposes of gaining access to a document or record relating to 1 or more WELS products.

50 Refusing consent not an offence

The occupier of WELS premises does not commit an offence if—

- (a) the occupier refuses to allow a WELS inspector to enter, or remain on, the premises; and
- (b) the WELS inspector does not have a warrant to enter the premises.

51 Inspection powers—with warrant

- (1) A WELS inspector may enter WELS premises and exercise the powers set out in subsection (2) if the WELS inspector has a warrant for the entry.

Note Div 9.3 deals with applications for warrants.

- (2) For the purposes set out in section 47 (Purposes for which functions can be exercised), a WELS inspector who enters WELS premises under warrant may do 1 or more of the following:
 - (a) exercise 1 or more of the functions set out in section 49 (3) (Inspection powers—with consent);
 - (b) require anyone on the premises to—

- (i) answer any questions put by the WELS inspector; and
 - (ii) produce any book, record or document requested by the WELS inspector;
- (c) seize or secure any evidential material on the premises.
- (3) A person commits an offence if—
 - (a) the person is required to answer a question or produce a book, record or document under subsection (2) (b); and
 - (b) the person does not answer the question or produce the book, record or document.

Maximum penalty: 60 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (4) An offence against this section is a strict liability offence.

Note This section differs from the Commonwealth Act, s 51.

52 Announcement before entry under warrant

- (1) A WELS inspector must, before entering WELS premises under a warrant—
 - (a) announce that the inspector is authorised to enter the premises; and
 - (b) give anyone on the premises an opportunity to allow entry to the premises.
- (2) A WELS inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.

53 Copy of warrant to be given to occupier

- (1) If a warrant in relation to WELS premises is being executed and the occupier of the premises is present at the premises, the WELS inspector must—
 - (a) give a copy of the warrant to the occupier; and
 - (b) identify himself or herself to the occupier.
- (2) The copy of the warrant does not need to include the signature of the magistrate who issued the warrant.

54 Occupier must provide inspector with facilities and assistance

- (1) A person commits an offence if—
 - (a) the person is the occupier of WELS premises; and
 - (b) a WELS inspector enters the premises under a warrant; and
 - (c) the person does not provide the WELS inspector with all reasonable facilities and assistance for the effective execution of the warrant.

Maximum penalty: 30 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) An offence against this section is a strict liability offence.

55 Seizing or securing evidential material

- (1) If a WELS inspector seizes or secures evidential material on WELS premises, the WELS inspector must give the occupier of the premises a receipt for the material.
- (2) The regulator may make copies of the material.

- (3) The regulator may examine or test the material, even though that might result in damage or destruction of the material or a reduction in its value.
- (4) The regulator must return or release the material when the first of the following happens:
 - (a) the material is no longer needed for the purposes for which it was seized or secured;
 - (b) the 90-day period beginning on the day the material was seized or secured ends.

56 Keeping evidential material for longer than 90 days

- (1) The regulator may apply to the Magistrates Court for an order allowing evidential material to be kept by the regulator for a period longer than the 90-day period mentioned in section 55 (4) (b).
- (2) If the Magistrates Court makes an order, the regulator may keep the evidential material for the period allowed under the order.
- (3) In deciding the application, the Magistrates Court must allow the owner of the evidential material to appear and be heard.
- (4) The Magistrates Court must not make an order allowing the evidential material to be kept for a longer period unless it is satisfied that the order is necessary for the purposes of prosecuting an offence against this Act.

57 Returning evidential material

The regulator may dispose of evidential material as the regulator considers appropriate if the regulator cannot, despite making reasonable efforts, find—

- (a) the owner of the material; or
- (b) a person who was in lawful possession of the material when the material was seized or secured.

Division 9.3 Applying for warrants to enter WELS premises

58 Ordinary warrants

- (1) A WELS inspector may apply to a magistrate for a warrant under this section for WELS premises.
- (2) The magistrate may issue the warrant if the magistrate is satisfied, by evidence on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material in or on the premises.
- (3) However, the magistrate may issue the warrant only if the WELS inspector or someone else has given the magistrate, either orally or by affidavit, the further information (if any) that the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (4) The warrant must—
 - (a) name 1 or more WELS inspectors; and
 - (b) authorise the named WELS inspectors to enter the premises using any necessary and reasonable assistance and force; and
 - (c) state whether the entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (d) state the day (not later than 1 week after the day the warrant is issued) when the warrant ceases to have effect; and
 - (e) state the purpose for which the warrant is issued.

Note This section differs from the Commonwealth Act, s 58.

59 Warrants by telephone, fax etc

- (1) If, in an urgent case, a WELS inspector considers it necessary to do so, the WELS inspector may apply to a magistrate by telephone, fax

or other electronic means for a warrant under section 58 for WELS premises.

- (2) The magistrate may—
 - (a) require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) make a recording of all or any part of the communication.
- (3) Before applying for the warrant, the WELS inspector must prepare an affidavit in relation to the premises stating the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the WELS inspector may apply for the warrant before the affidavit is sworn.
- (5) If the magistrate is satisfied that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 58 if the application had been made under that section.
- (6) The magistrate may be satisfied that there are reasonable grounds for issuing the warrant only after—
 - (a) having considered the terms of the affidavit; and
 - (b) having received the further information (if any) that the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (7) If the magistrate completes and signs the warrant—
 - (a) the magistrate must—
 - (i) tell the WELS inspector what the terms of the warrant are; and
 - (ii) tell the WELS inspector the date and the time the warrant was signed; and

- (iii) tell the WELS inspector the day (not later than 1 week after the day the magistrate completes and signs the warrant) when the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the WELS inspector must—
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form of warrant the name of the magistrate and the date and time the warrant was signed.
- (8) The WELS inspector must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate—
 - (a) the form of warrant completed by the WELS inspector; and
 - (b) the affidavit mentioned in subsection (3), which must have been properly sworn.
- (9) When the magistrate receives the documents, the magistrate must—
 - (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them as the magistrate would have dealt with the affidavit if the application had been made under section 58.
- (10) A form of warrant completed under subsection (7) is authority for the same powers that are authorised by the warrant signed by the magistrate.
- (11) If—
 - (a) it is material, in a proceeding, for a court to be satisfied that an exercise of a power was authorised by this section; and

- (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

Note This section differs from the Commonwealth Act, s 59.

Division 9.4 Giving WELS information to WELS inspectors

60 Meaning of *person who has WELS information*

A person is a *person who has WELS information* if the regulator believes, on reasonable grounds, that the person can give information, or produce a document, relevant for the purposes of investigating or preventing an offence against this Act.

61 Regulator may require person to give information

- (1) The regulator may, by written notice, require a person who has WELS information to give the WELS inspector stated in the notice, and in the way and within the period stated in the notice—
 - (a) the information stated in the notice; or
 - (b) the document (if any) stated in the notice.
- (2) The period stated in the notice must end not less than 14 days after the day the notice is given to the person.
- (3) The notice must set out the effect of the Criminal Code, section 338 (Giving false or misleading information) and, if relevant, section 339 (Producing false or misleading documents).
- (4) A person commits an offence if—
 - (a) the person is required to give information or a document to a WELS inspector by a notice under subsection (1); and

- (b) the person does not give the WELS inspector the information or document in accordance with the notice.

Maximum penalty: 60 penalty units.

- (5) An offence against this section is a strict liability offence.

Note This section differs from the Commonwealth Act, s 61.

62 Regulator may require person to appear before WELS inspector

- (1) The regulator may, by written notice, require a person who has WELS information to appear before the WELS inspector stated in the notice, at a time and place stated in the notice—
 - (a) to answer any questions put by the WELS inspector; and
 - (b) to produce to the WELS inspector the document (if any) stated in the notice.
- (2) The time stated in the notice must not be earlier than 14 days after the day the notice is given to the person.
- (3) The notice must set out the effect of the Criminal Code, section 338 (Giving false or misleading information) and, if relevant, section 339 (Producing false or misleading documents).
- (4) A person commits an offence if—
 - (a) the person is required to appear before a WELS inspector by a notice under subsection (1); and
 - (b) the person does not appear before the WELS inspector in accordance with the notice.

Maximum penalty: 60 penalty units.

- (5) A person commits an offence if—
 - (a) the person is required by a notice under subsection (1) to appear before a WELS inspector; and

- (b) when appearing before the WELS inspector, the person does not—
- (i) answer a question put by the WELS inspector; or
 - (ii) produce a document to the WELS inspector as required by the notice.

Maximum penalty: 60 penalty units.

- (6) An offence against this section is a strict liability offence.

Note This section differs from the Commonwealth Act, s 62.

Division 9.5 Other enforcement matters

63 Privilege against self-incrimination not affected

Note The Commonwealth Act, s 63 preserves the privilege against selfincrimination. This provision is unnecessary in the ACT. The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

63A Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, a WELS inspector must take all reasonable steps to ensure that the inspector, and anyone assisting the inspector, causes as little inconvenience, detriment and damage as is practicable.
- (2) If a WELS inspector, or a person assisting a WELS inspector, damages anything in the exercise, or purported exercise, of a function under this part, the inspector must give written notice of the particulars of the damage to the person who the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens on premises entered under this part in the absence of the occupier, the notice may be given by securing it in a conspicuous place on the premises.

Note This section does not appear in the Commonwealth Act.

63B Compensation to be paid in certain circumstances

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by a WELS inspector or a person assisting a WELS inspector.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Note This section does not appear in the Commonwealth Act.

Part 10 Money

Division 10.1 WELS account

64 WELS account

Note The Commonwealth Act, s 64 establishes the WELS account.

65 Credits to WELS account

- (1) This section applies to—
- (a) an amount received by the Territory for the purposes of the WELS scheme; and
 - (b) an amount received by the Territory in connection with the exercise of the regulator's functions under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The amount is held by the Territory on trust for the Commonwealth.

Note This section differs from the Commonwealth Act, s 65.

66 Purpose of WELS account

The purpose of the WELS account is to make payments—

- (a) to further the objects of this Act (as set out in section 3) and those of any corresponding law; and
- (b) otherwise in connection with the exercise of the regulator's functions under this Act or a corresponding law.

Note This section differs from the Commonwealth Act, s 66.

Division 10.2 Charging fees and recovery of amounts

67 Regulator may charge for services

The regulator may charge fees for services provided by, or on behalf of, the regulator in exercising the regulator's functions under this Act.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 This section differs from the Commonwealth Act, s 67.

68 Recovery of amounts

The following amounts may be recovered in a court of competent jurisdiction as debts owing to the Territory:

- (a) fees payable to the Territory under this Act or a corresponding law;
- (b) amounts payable to the Territory in connection with the exercise of the regulator's functions under this Act.

Note This section differs from the Commonwealth Act, s 68.

Part 11 Review of decisions

69 **Meaning of *reviewable decision* and *affected person***

- (1) Each of the following decisions is a *reviewable decision*:
 - (a) a decision by the regulator to refuse to register a WELS product under section 29;
 - (b) a decision by the regulator to cancel or suspend the registration of a WELS product under section 31.
- (2) A person whose application to register a WELS product is refused under section 29 is the *affected person* in relation to the decision to refuse to register the WELS product.
- (3) The person on whose application a WELS product was registered is the *affected person* in relation to a decision to cancel or suspend that registration under section 31.

70 **Notification of decisions and review rights**

- (1) The regulator must, as soon as practicable after making a reviewable decision, give a written notice to the affected person in relation to the decision.
- (2) The notice must contain—
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) a statement setting out particulars of the person's review rights.
- (3) A failure to comply with this section in relation to a decision does not affect the validity of the decision.

71 Internal review

- (1) The affected person in relation to a reviewable decision (other than a decision made by the regulator personally) may apply in writing to the regulator for review (the *internal review*) of the decision.
- (2) An application for internal review must be made within 30 days after the day the decision first came to the notice of the applicant, or within the further period (if any) that the regulator, either before or after the end of that period, allows.
- (3) The regulator must, on receiving an application, review the reviewable decision personally.
- (4) The regulator may—
 - (a) make a decision confirming, varying or revoking the reviewable decision; and
 - (b) if the regulator revokes the decision, make any other decision the regulator considers appropriate.

72 Review of decisions by Commonwealth administrative appeals tribunal

- (1) Subject to the Commonwealth Administrative Appeals Tribunal Act, an eligible person may apply under that Act for a review of—
 - (a) a reviewable decision made by the regulator personally; or
 - (b) an internal review decision made by the regulator under section 71.
- (2) An application under subsection (1) may be made only by the affected person concerned.

Note This section differs from the Commonwealth Act, s 72.

Part 12 Miscellaneous

73 Compensation for damage to electronic equipment

- (1) This section applies if—
 - (a) because of electronic equipment being operated as mentioned in section 49—
 - (i) damage is caused to the equipment; or
 - (ii) data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption happens because—
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The regulator must pay the owner of the equipment, or the user of the data or programs, the reasonable compensation for the damage or corruption agreed on with the owner or user.
- (3) If the regulator and the owner or user do not agree on the amount of compensation, the owner or user may, by proceeding in a court of competent jurisdiction, recover from the regulator the reasonable compensation that the court decides.
- (4) In deciding the amount of compensation payable, the court must have regard to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

- (5) This section is additional to section 63B (Compensation to be paid in certain circumstances).

Note This section differs from the Commonwealth Act, s 73.

74 Compensation for acquisition of property

- (1) If—
- (a) apart from this section, the operation of any provision of this Act would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be unlawful because of the Self-Government Act, section 23 (1);

the Territory is liable to pay reasonable compensation to the person for the acquisition.

- (2) If the Territory and the person do not agree on the amount of compensation, the person may, by proceeding in a court of competent jurisdiction, recover from the Territory the reasonable compensation that the court decides.

Note This section differs from the Commonwealth Act, s 74.

75 Annual report

The Minister must present a copy of the annual report of the regulator on the operation of the WELS scheme given to the Territory under the Commonwealth Act, section 75 to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

Note This section differs from the Commonwealth Act, s 75. That section provides for the preparation by the regulator of an annual report on the operation of the WELS scheme. The Commonwealth Minister is required to give a copy to each participating State and Territory.

76 Review of operation of WELS scheme

The Minister must present a copy of the report of the independent review of the WELS scheme given to the Territory under the Commonwealth Act, section 76 to the Legislative Assembly within 6 sitting days after the day the Minister receives the report.

Note This section differs from the Commonwealth Act, s 76. That section provides for an independent review of the operation of the WELS scheme to be undertaken as soon as possible after the 5th anniversary of the commencement of that Act. The Commonwealth Minister is required to give a copy to each participating State and Territory.

77 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may create offences and fix maximum penalties of not more than 30 penalty units for the offences.

Note This section differs from the Commonwealth Act, s 77.

Dictionary

(see s 7)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- administrative unit
- chief executive (see s 163)
- Commonwealth gazette
- document
- Executive
- exercise
- fail
- function
- in relation to
- Minister (see s 162)
- oath
- public employee
- swear
- territory authority
- territory instrumentality.

Note 3 Most of the definitions in this dictionary have equivalent definitions in the Commonwealth Act, s 7.

affected person—see section 69 (2) and (3).

agency—

(a) in relation to the Commonwealth, includes the following:

- (i) an Agency within the meaning of the *Financial Management and Accountability Act 1997* (Cwlth);

- (ii) a corporation established for a public purpose under a law of the Commonwealth; and
- (b) in relation to a State or another Territory, includes the following:
 - (i) a department of state (however described) of the State or Territory;
 - (ii) a corporation established for a public purpose under a law of the State or Territory.

applicable WELS standard—see section 32.

Commonwealth Act means the *Water Efficiency Labelling and Standards Act 2005* (Cwlth).

Commonwealth administrative appeals tribunal means the Administrative Appeals Tribunal established under the Commonwealth Administrative Appeals Tribunal Act.

Commonwealth Administrative Appeals Tribunal Act means the *Administrative Appeals Tribunal Act 1975* (Cwlth).

Commonwealth Minister—see the Commonwealth Act, section 7.

corresponding law—see section 12.

damage, in relation to data, includes damage by erasure of data or addition of other data.

evidential material means anything that may be relevant to the investigation or prosecution of an offence against this Act.

occupier, of premises, includes a person who apparently represents the occupier of the premises.

person who has WELS information—see section 60.

registered means registered under a WELS standard.

regulator means the Regulator established by the Commonwealth Act, section 21.

reviewable decision—see section 69 (1).

supply means—

- (a) supply for consideration; or
- (b) offer to supply for consideration.

water-saving product means a device, appliance or fitting that—

- (a) is not a water-use product; and
- (b) is designed to operate in place of a water-use product.

water-use product means a device, appliance or fitting through which, or into which, water flows as part of its normal operation.

WELS account—see the Commonwealth Act, section 7, definition of ***WELS Account***.

WELS business premises means WELS premises that are open to the public on a regular basis.

WELS inspector means a person appointed under section 45 (1).

WELS-labelled—see section 20 (1).

WELS premises means premises used for, or in relation to, the supply of 1 or more WELS products.

WELS product means a product that is a WELS product under the Commonwealth Act, section 18 (1).

WELS scheme means the water efficiency labelling and standards scheme established by this Act and corresponding laws.

WELS standard, for a WELS product, means the WELS standard set out for the product in the determination applying to the WELS product under the Commonwealth Act, section 18 (1).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 9 December 2004.

2 Notification

Notified under the Legislation Act on 16 March 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Water Efficiency Labelling and Standards Bill 2005, which originated in the Legislative Assembly as the Water Efficiency Labelling and Standards Bill 2004 and was passed by the Assembly on 10 March 2005.

Clerk of the Legislative Assembly

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