

**THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY**

**2004**

**WATER EFFICIENCY LABELLING AND STANDARDS AMENDMENT  
LEGISLATION BILL 2004**

**EXPLANATORY STATEMENT**

Circulated by the Authority of the  
Minister for the Environment  
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# **WATER EFFICIENCY LABELLING AND STANDARDS AMENDMENT LEGISLATION BILL 2004**

## **EXPLANATORY STATEMENT**

### **Outline**

The purpose of the *Water Efficiency Labelling and Standards Bill 2004* is to provide for the establishment and operation of a nationally consistent scheme to apply state water efficiency labelling and minimum performance standards to certain water-use products. The aim of water efficiency labelling is to encourage the uptake of water efficient products and appliances in domestic and commercial areas while maintaining individual choice and accounting for regional variations in water supply.

The objects of this Bill are to:

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

The Bill provides for the determination of "WELS products" to be subject to the scheme, and for the specification of "WELS standards" to apply to WELS products, setting requirements for water efficiency, performance, registration and labelling of these products.

A Regulator is established to administer the scheme and is empowered to make arrangements with Commonwealth, State and Territory agencies to assist with his or her functions.

The Bill creates offences and associated penalties in relation to failing to comply with registration, labelling and minimum efficiency and performance requirements, and in relation to the misuse of standards. It provides for an enforcement regime that includes infringement notices, enforceable undertakings and injunctions. The Bill also provides for the appointment of inspectors to investigate possible contraventions and sets out their powers and obligations.

The Commonwealth Bill provides for the establishment of a WELS Account as a Special Account, to receive funds and to make payments in relation to the operation of the WELS scheme. Provision is made for fees to be charged and credited to the WELS Account, for services provided in performance of the Regulator's functions.

The Bill includes provisions for internal and Administrative Appeals Tribunal review of decisions, for compensation for certain losses, for the making of regulations, and for independent review after 5 years of operation of the Act.

## **Part 1**

### **Clause 1: Short title**

This clause is a formal provision specifying the short title of the Bill.

### **Clause 2: Commencement**

This clause provides the Bill will commence on a day fixed by the Minister.

### **Clause 3: Objects**

This clause sets out the objects of the Bill. The Bill is intended to ensure that purchasers of particular types of water-use and water-saving products are provided with information to assist and encourage them to select more water-efficient products. It is also intended to encourage (and in some cases require) suppliers of these products

to adopt more water-efficient technology. Ultimately, it is envisaged that the purchase of more water-efficient products will result in reduced water consumption, thus contributing to the conservation of water supplies.

#### **Clause 4: Act to bind the Crown**

It is not necessary for the ACT Bill to include a clause that the Act binds the Crown, as the *Legislation Act 2001* provides for this.

#### **Clause 5: External Territories**

There is no need for the ACT Bill to include this provision.

#### **Clause 5A: Numbering**

This clause establishes the convention for the Act to maintain numbering with its Commonwealth counterpart. The number and heading of provisions in the Commonwealth Bill that are not used in this Bill are included without their body text. Additional provisions are included using letters, as has been done for clauses 5A and 5B.

#### **Clause 5B: Notes**

This clause provides that notes in the Act are explanatory and do not form part of the Act itself.

#### **Clause 6: Offences against the Act-application of Criminal Code etc**

This clause makes clear that the general principles of criminal responsibility contained in chapter 2 of the *Criminal Code* apply to all offences against this Bill. All offence penalties are dealt with under a penalty unit system described in the *Legislation Act 2001* (ACT).

## **Part 2 Interpretation**

### **Clause 7: Dictionary**

This clause refers to the dictionary found at the end of the Act .

## **Part 3 National WELS scheme**

### **Clause 8: WELS scheme to be a national cooperative scheme**

This clause notes that this Bill is intended to form a part of a cooperative scheme between the Commonwealth and the States and Territories. The relevant State and Territory Ministers have agreed in principle to introduce complementary 'mirror' legislation to operate in conjunction with this Act. The effect of the complementary legislation will also be to compensate for the small jurisdictional gaps in the coverage of Commonwealth powers in relation to the operation of the WELS Scheme.

### **Clause 9: Application of the Act**

The clause in the Commonwealth Act, about the application of that Act, is not necessary in the ACT.

### **Clause 10: Relationship to other territory laws**

This clause clarifies that the provisions of this Act do not replace or override any existing Territory laws.

### **Clause 11: State and territory laws may operate concurrently**

The clause in the Commonwealth Act, allowing State laws to operate concurrently with the Act, is not necessary in the ACT.

### **Clause 12: Meaning of *corresponding law***

This clause defines "corresponding law".

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

The clause in the Commonwealth Act, allowing corresponding State-Territory laws to confer functions, powers and duties on certain Commonwealth officers, is not necessary in the ACT.

**Clause 14: How duty is imposed by corresponding laws**

The clause in the Commonwealth Act, imposing of duties on Commonwealth officers by corresponding State-Territory laws, is not necessary in the ACT.

**Clause 15: When a corresponding State-Territory law imposes a duty**

The clause in the Commonwealth Act, that defines "imposes a duty" for the purposes of sections 13 and 14 of that Act, is not necessary in the ACT.

**Clause 16: No doubling – up of liabilities**

This clause prevents persons from being punished or penalised twice for an offence under this Bill, if they have already been punished or penalised for the same offence under the Commonwealth Act.

**Clause 17: Review of decisions under the Act**

This clause provides for application to be made to the Administrative Appeals Tribunal (AAT) for review of a "reviewable decision" as defined in clause 69(1).

Clause 69(1) defines a "reviewable decision" for the purposes of this Act as a decision by the Regulator to refuse to register a WELS product under clause 29 or to cancel or suspend the registration of a WELS product under clause 31.

## **Part 4 WELS products and WELS standards**

### **Clause 18: WELS products**

The clause in the Commonwealth Act, that enables the Commonwealth Minister to determine that certain products are covered by the WELS scheme and set out standards for those products, is not necessary in the ACT. Before such a determination can be made, however, the Commonwealth Minister must have the agreement of a majority of the participating States and Territories to the terms of the determination. A "participating State or Territory" is one in which there is a corresponding State- Territory law within the meaning of the Commonwealth Act.

### **Clause 19: WELS standards**

The clause in the Commonwealth Act, that provides what must be set out in WELS standards and enables the standards to require products to be registered or labelled for the purposes of specified supplies, is not necessary in the ACT.

### **Clause 20: Meaning of WEL-labelled**

This clause enables a WELS standard to impose labelling requirements for WELS products. The clause allows the labeling requirements to encompass the characteristics, use and display of labels

## **Part 5 WELS regulator**

### **Clause 21: The regulator**

The clause in the Commonwealth Act, appointing the Regulator, is not necessary in the ACT. The Commonwealth Act will appoint the Secretary of the relevant Commonwealth department as the Regulator.

## **Clause 22: Functions of the regulator**

This clause sets out the functions of the Regulator, which are essentially to oversee the operation of the scheme, and include—

- To administer the WELS scheme: The Regulator will, among other things, receive and process applications for registration and issue registrations, fund and provide WELS inspectors, and administer operation of the WELS Account established under the Commonwealth Act.
- To undertake or commission research in relation to water-use and water-saving products, and provide advice in relation to determining that water-use or water-saving products are WELS products: The Regulator will evaluate which products should be subject to the scheme and the provisions that should apply to them and advise on this. The intent of this provision is to provide for a mechanism that will continuously identify products to be included in the scheme over time, and possibly also some products that no longer ought to be included.
- To undertake or commission research in relation to WELS standards and their effectiveness in reducing water use, provide advice to the Minister about the operation of WELS standards, and assist in the development of WELS standards: The Regulator will evaluate the standards that should apply to particular WELS products and the effectiveness of standards in meeting the objects of the Act, and advise the Minister on this, as well as contributing to work to develop standards. (This could result in changes to standards. Some products might need to be modified in order to comply with the revised standards, or have their registration withdrawn.)



- To provide information and advice to the public, the Minister and the relevant Department Secretary about the operation of the WELS scheme: The office of the Regulator will be the principal contact point for members of the public on the WELS scheme and will be responsible for the preparation and dissemination of information regarding the scheme. It will also provide advice to, and circulate information on behalf of, government.
- Such other functions as are conferred on the Regulator by this Act, the regulations or any other law.

### **Clause 23: Powers of the Regulator**

The clause in the Cth Act conferring powers on the Regulator, is not necessary in the ACT.

### **Clause 24: Arrangements with other agencies**

This clause provides for the Regulator to make arrangements with other government agencies to assist with carrying out functions and duties and exercising powers under the Act. Other agencies may have expertise in areas relevant to the operation of WELS, and it may increase efficiency and cost-effectiveness for the Regulator to draw on this. For example, it is envisaged that the certain State consumer affairs agencies could assist with compliance and enforcement action.

### **Clause 25: Delegation**

This clause provides for the Regulator to delegate powers to other State/Territory or Commonwealth officers (subject to the Regulator's directions) and public employees. It is envisaged that much of the work undertaken to fulfill the Regulator's functions will be carried out by officers within the Regulator's Department, so it will be

necessary for the Regulator to delegate powers to the principal officers involved. Also, given the provision under clause 24 for the Regulator to make arrangements with State government agencies to assist with carrying out functions, it would be necessary for the Regulator's capacity to delegate to be extended to relevant officers of such agencies. Delegation of powers to a Territory public employee is subject to the agreement of the Territory.

## **Part 6 Registration of WELS Products**

### **Clause 26: Applying for registration**

This clause provides for the manufacturer (who may be defined for the purposes of this Bill by regulation under the Commonwealth Act) of a WELS product to apply for registration of the product. The purpose of registration is to develop better knowledge of the market and assist with compliance monitoring and enforcement of the WELS scheme. Information obtained through registration will be used to assess whether products comply with the relevant standards and to determine the appropriate rating labels. While it is intended that some types of WELS products will not be subject to mandatory registration, because the benefits of subjecting them to the scheme appear to be marginal, it will still be possible for products of those types to be voluntarily registered, so that, for example, the manufacturer of a water-efficient product of that type who wishes to demonstrate the product's water-efficiency is able to do so. Once a product has been registered, even if registration for that product is optional, the product must comply with any registration requirements, including labeling requirements, set out in the applicable WELS standard.

**Clause 27: Documentation etc to be provided with application for registration**

This clause applies the requirements set out under the Commonwealth Act as to how an application for registration is to be made and the conditions that must be met to maintain registration. Subject to disallowance by either House of the Commonwealth Parliament, the Commonwealth Act provides for the Commonwealth Minister to specify the form an application is to take, together with the documentation and registration fee that is to accompany the application. It is intended that the documentation required of applicants for registration of a WELS product is to include evidence of the results of testing the product against the relevant WELS standard, as well as (where relevant) a sample of the water efficiency label to be used for the product.

**Clause 28: Registration of products**

This clause requires the Regulator to register, by notice published in the Commonwealth of Australia Gazette, a WELS product for which an application for registration has been received and approved by the Regulator, or, where an application for registration has been refused, to give the applicant written notice of the refusal. If the Regulator has neither registered the product nor notified the applicant of refusal within 3 months of the application being made, the application is automatically taken to have been refused.

**Clause 29: Grounds for refusing to register**

This clause specifies grounds upon which the Regulator may refuse to register a WELS product. These are that the application has not been made in accordance with

the requirements of clause 27, that the Regulator is not satisfied as to the accuracy of the information provided in the application, or that the product fails to satisfy the requirements of the relevant WELS standard.

### **Clause 30: Period of registration**

Sub-clause (1) provides for 5-year registration periods for WELS products (unless the registration is cancelled or suspended under clause 31). A 5-year registration period has been stipulated to mirror the arrangements in place for the existing energy labeling program and is accepted by industry as a suitable registration period due to the rapid changes in technology and the frequent introduction of new models. However, if during the registration period for a WELS product the Commonwealth Minister makes a determination on a new or revised WELS standard, subclauses (2) and (3) provide that existing registrations under the superseded standard will expire 12 months after the introduction of the new or revised standard. If the Commonwealth Minister extends that 12 month period for the corresponding provision of the Commonwealth Act, sub-clause (4) applies that extension to the ACT Act.

### **Clause 31: Cancelling or suspending registration**

This clause empowers the Regulator to cancel or suspend the registration of a WELS product where conditions of registration are not being complied with or where the Regulator subsequently becomes aware that the information provided in the application for registration was not accurate at the time of application or is no

longer accurate because changes have been made to the product. In circumstances where the Regulator determines that the registration of the WELS product is to be suspended or terminated, the Regulator is required to provide the person on whose application the product was registered with written notice of the cancellation or suspension of registration of the WELS product. Sub-clause (3) requires the Regulator to cancel a registration upon request from a manufacturer of a WELS product, in circumstances where the current WELS standard for that product type does not require the product to be registered. This provision is for the benefit of manufacturers who no longer wish to register WELS-label products that are not required to be registered.

## **Part 7 Offences relating to the supply of WELS products**

### **Division 7.1 applicable WELS standards**

#### **Clause 32: Meaning of applicable WELS standard**

This clause defines "applicable WELS standard" as the standard under which a WELS product is registered or, where the product is not registered, the most recent WELS standard relating to that type of product.

### **Division 7.2 Registration and labelling**

#### **Clause 33: registration requirement**

This clause makes it a strict liability offence to supply an unregistered WELS product where the applicable standard requires the product to be registered.

#### **Clause 34: Labelling registered products**

This clause makes it a strict liability offence to supply a registered WELS product without a label, where the applicable standard requires the product to carry a label if registered. (Note: in some cases, a product may not be required to be registered, but the standard may specify that if the product is registered, it must carry a label. In such a case, it would not be an offence for the product not to be registered, but if it were registered, it would then be an offence for it not to carry a label.)

### **Division 7.3 Minimum efficiency and performance requirements**

#### **Clause 35: Minimum water efficiency—products required to be registered**

This clause makes it a strict liability offence to supply a WELS product required to be registered that does not comply with minimum water efficiency requirements specified in the applicable WELS standard.

#### **Clause 36: Minimum general performance – products required to be registered**

This clause makes it a strict liability offence to supply a WELS product required to be registered that does not comply with minimum performance requirements specified in the applicable WELS standard.

### **Division 7.4 Misuse of WELS standards and offences information**

#### **Clause 37: Misuse of WELS standards and information**

This clause makes it a strict liability offence to use a WELS standard or information included in a WELS standard, in a manner that is inconsistent with the standard, for example, by supplying a labelled product that is not registered.

**Clause 38: Information inconsistent with WELS standards**

This clause makes it a strict liability offence to use information for or in relation to supply of a WELS product, that is inconsistent with information in the applicable WELS standard. For example, this would include supplying a product with additional labels or markings of a type that contradict the message of the approved label.

**Clause 39: Using information in supply of products**

This clause elaborates on the meaning of using information for the purposes of clauses 37 and 38. Without limiting the general meaning of words used in those clauses, it specifies that information is used for, or in relation to, the supply of a product if the information is conveyed on or by a label, packaging, document or other material provided with or in connection with the product or any advertising relating to the product.

Offences against clauses 33, 34, 35, 36, 37 and 38 are all intended to be offences of strict liability to which the Code defences apply, including honest and reasonable mistake of fact. Strict liability is imposed to facilitate the expedient enforcement of the provisions given that there are expected to be a high number of inadvertent contraventions of the Act. A strict liability regime is intended to facilitate the imposition of penalties for the physical elements of the offences without proof of fault. Without a strict liability regime in place, it would be very difficult to enforce these provisions.

## **Part 8 Other enforcement provisions**

### **Division 8.1 Infringement Notices**

#### **Clause 40: Infringement Notices**

The clause in the Cth Act, allowing for the making of regulations to provide for infringement notices, is not necessary in the ACT. General provisions regarding infringement notices are in the *Magistrates Court Act 1930*. The penalty for infringement notices is limited under the *Magistrates Court Act 1930* to not exceed the maximum fine that may be imposed by a court if the person were prosecuted and convicted for the offence under the Act. This arrangement is aimed at facilitating the speedy resolution of minor offences against the Act and to minimise the time and resources spent on litigation.

### **Division 2 – Publicising offences**

#### **Clause 41: Regulator may publicise offences**

This clause allows the Regulator to publicise convictions against the Act, without placing any limitations on the Regulator's powers in this regard. Nor does it prevent anyone else from publicising an offence against the Act or affect any obligation on anyone to publicise an offence against the Act. It is envisaged that publicising offences against the Act will act as a deterrent to others against further offences against the Act.



## **Division 8.3 Enforceable undertakings**

### **Clause 42: Acceptance of undertakings**

This clause enables the Regulator to accept undertakings (or variations to or withdrawal of undertakings) in connection with matters relating to compliance with a WELS standard or registration condition. This provision is intended to act as an alternative to prosecution in those circumstances where non-compliance with the Act would otherwise result in an offence in relation to the compliance with a WELS standard or a registration condition.

### **Clause 43: Enforcement of undertakings**

This clause provides for the Regulator to apply to the Supreme Court, where the Regulator considers that a person has breached any terms of an undertaking given under clause 42, for an order to direct the person either to comply with the terms of the undertaking, pay the Territory an amount up to that of any financial benefit the person has gained as a result of the breach, compensate any other person for loss or damage resulting from the breach, or anything else that the Court considers appropriate.

## **Division 8.4 Injunctions**

### **Clause 44: Injunctions**

This clause empowers the Supreme Court, on the application of the Regulator, to grant an injunction either to restrain a person who is engaging in or proposing to engage in conduct constituting an offence against the Act from engaging in that conduct, or to require the person to take such specified action as the Court

determines in order to comply with the Act. Sub-clause (2) empowers the Court, on application, to grant an injunction, by consent of all parties to the proceedings regardless of whether the Court is satisfied of the commission or potential commission of an offence. Sub-clause (3) enables the Court to grant an interim injunction pending its determination of an application. The purpose of this is to enable the court to prevent any potential damage, destruction or the removal of the products from the jurisdiction while it is considering the application. Sub-clause (4) prevents the Court from requiring the Regulator or anyone else to give an undertaking as to damages as a condition of granting an interim injunction. Sub-clauses (5), (6) and (7) enable the Court to discharge or vary the injunctions referred to above.

## **Part 9 WELS inspectors**

### **Division 9.1 Appointment of WELS inspectors**

#### **Clause 45: regulator may appoint WELS inspectors**

This clause empowers the Regulator to appoint public employees or State and Commonwealth government officers and employees as WELS inspectors. The appointment of Territory government officers and employees as WELS inspectors is, however, subject to the agreement of the Territory. This clause also requires WELS inspectors to comply with any directions of the Regulator in exercising their powers or performing their functions as WELS inspectors.

#### **Clause 46: Identity cards**

This clause requires the Regulator to issue photographic identity cards (the form of which is to be prescribed by regulation under the Commonwealth Act) to all WELS inspectors. It provides that WELS inspectors must carry their identity cards at all

times while operating as WELS inspectors. Sub-clause (3) makes it an offence for WELS inspectors to fail to return their identity cards to the Regulator as soon as practicable after ceasing to be WELS inspectors, and imposes a maximum penalty of \$110 for this. Sub-clause (6) prohibits a WELS inspector from exercising powers as a WELS inspector without being able to produce his or her identity card at the request of the occupier of premises to be inspected.

## **Division 9.2 Powers of WELS inspectors**

### **Clause 47: Purposes for which functions can be exercised**

This clause as a general provision, enables WELS inspectors to exercise their powers for the purposes of determining whether a person is complying with the Act or regulations or for the purposes of investigating offences against the Act or regulations.

### **Clause 48: Inspectors powers – public areas of WELS business premises**

This clause allows WELS inspectors, in exercising their powers, to enter WELS business premises at any time when the premises are open to the public (i.e. during normal business hours) to monitor compliance with the Act, and to do essentially the same things as members of the public are able to do on the premises during normal business hours, including inspecting WELS products; purchasing any WELS product that is available for sale; inspecting or collecting written information, advertising material or any other documentation that is available to the public; discussing product features with any person; or observing practices relating to the supply of products. However, this does not affect any rights of occupiers to refuse to allow inspectors on their premises.

**Clause 49: Inspection powers – with consent**

This clause allows a WELS inspector to otherwise enter premises with the consent of the occupier of the premises. In seeking the consent of the occupier, the WELS inspector must make the occupier aware that he or she may refuse or withdraw consent at any time.

**Clause 50: Refusing consent is not an offence**

This clause makes it clear that it is not an offence for occupiers of WELS premises to refuse to allow WELS inspectors to enter or remain on their premises without a warrant.

**Clause 51: Inspection powers – with warrant**

This clause authorises a WELS inspector to enter premises with a warrant, irrespective of the occupier's consent. WELS inspectors who do enter premises with consent or with a warrant are provided general powers of search, inspection and information gathering. This clause also empowers a WELS inspector (who has entered premises with a warrant) to require any person on the premises to answer questions and produce documentation. Failure to comply with such a request from a WELS inspector is a strict liability offence. This clause also empowers the inspector to seize or secure any evidential material on the premises and ensures that the Regulator has the powers needed to take immediate action to secure evidence relevant to an investigation or prosecution. (Note that clauses 55, 56 and 57 set out requirements relating to seizing, securing and holding of evidential material).

**Clause 52: Announcement before entry under warrant**

This clause requires a WELS inspector, before entering WELS premises under a warrant, to announce that he/she is authorised to enter the premises and to provide any person at the premises the opportunity to allow entry. However, a WELS inspector need not comply with this if he or she reasonably considers that immediate entry is necessary to ensure the effective execution of the warrant.

**Clause 53: Copy of warrant to be given to occupier**

This clause requires a WELS inspector to give to the occupier of premises (if present) a copy of the warrant being executed in relation to the premises and identify himself or herself to the occupier. The copy of the warrant need not include the signature of the magistrate who issued the warrant. (Note: this is to allow for clause 59 urgent warrants, where there may not be an opportunity to obtain the magistrate's signature before executing the warrant.)

**Clause 54: Occupier must provide inspector with facilities and assistance**

This clause makes it a strict liability offence for the occupier of WELS premises (at which a warrant is being exercised), not to provide the WELS inspector executing the warrant with all reasonable facilities and assistance for the effective execution of the warrant.

**Clause 55: seizing or securing evidential material**

This clause requires a WELS inspector who seizes or secures evidential material to issue a receipt for such material to the occupier of the premises. The Regulator is permitted to make copies of the material, and to examine or test the material, even if

that might result in damage to the material. The Regulator is, however, required to return or release the material when it is no longer needed for the purposes for which it was seized or secured, or within 90 days at the latest. The purpose of this provision is to prevent businesses from being impeded for longer than is necessary.

#### **Clause 56: Keeping evidential material for longer than 90 days**

This clause enables the Regulator to apply to a magistrate for an order allowing possession or control of the material for a further specified period than the 90 days provided for by clause 55. In determining an application, the magistrate must allow the owner of the material to appear and be heard, and must not make an order for the extended possession or control of evidential material unless satisfied that it is necessary for the purposes of prosecuting an offence against this Act.

#### **Clause 57: Returning evidential material**

This clause allows the Regulator to dispose of evidential material, as the Regulator thinks appropriate, where the Regulator is unable to locate the owner of the material despite making reasonable efforts.

### **Division 9.3 Applying for warrants to enter WELS premises**

#### **Clause 58: Ordinary warrants**

This clause enables a magistrate to issue a warrant to a WELS inspector, if the magistrate is satisfied that entering the premises is necessary to determine whether a person is complying with the Act or regulations or to investigate a possible offence against the Act. The magistrate may require further information to be provided

with a warrant application in order to determine the need or otherwise for the warrant to be issued. A warrant authorises the WELS inspector to enter the premises using such assistance and force as is necessary and reasonable. The warrant must state the purpose for which it is issued, indicate when the entry is authorised, and specify the day on which it ceases to have effect (warrants may be issued for a maximum of one week).

**Clause 59: warrants by telephone, fax etc**

This clause allows for a WELS inspector to apply for an urgent warrant by telephone, fax or other electronic means. Where practical, the magistrate may require communication by voice and may record such communication. In such circumstances, before applying for the warrant the WELS inspector must still prepare information setting out the grounds on which the warrant is sought and of the necessity to enter the WELS premises, but if necessary the WELS inspector may apply for the warrant before the information is sworn or affirmed. If the magistrate is satisfied that there are reasonable grounds for doing so, he/she may then issue a warrant as if the application had been made under clause 58. The magistrate must then advise the WELS inspector of the terms of the warrant, the day on which and the time at which the warrant was signed, specify the day on which it ceases to have effect (warrants may be issued for a maximum of one week), and record on the warrant the reasons for its issue. The WELS inspector must complete a form of warrant in the same terms as advised by the magistrate and record the name of the magistrate and the time and date on which the warrant was signed. The WELS inspector must send this form of warrant to the magistrate within one day after the execution or expiry (whichever is earlier) of the warrant, together with duly sworn or affirmed information pertaining to the grounds

on which the warrant was sought. The magistrate is then required to attach these documents to the warrant and deal with them as if they were an ordinary warrant under clause 58.

## **Division 9.4 Giving WELS information to WELS inspectors**

### **Clause 60: Meaning of *person who has WELS information***

This clause defines a "person who has WELS information" as being a person whom the Regulator believes to be capable of providing information relevant for the purposes of investigating or preventing an offence under the Act.

### **Clause 61: Regulator may require person to give information**

This clause enables the Regulator, by written notice, to require a person who has WELS information to provide such information, documents or records as specified in the notice to a WELS inspector within a specified period of not less than 14 days.

### **Clause 62: Regulator may require a person to appear before a WELS inspector**

This clause enables the Regulator, by written notice, to require a person who has WELS information to appear before a WELS inspector in order to answer questions and provide to the inspector documents or records referred to in the notice, within a specified period of not less than 14 days. It is a strict liability offence not to comply with requirements under clauses 61 and 62. Notices given by the Regulator under clauses 61 and 62 are required to set out the effect of clause 62A.



## **Division 9.5 Other enforcement matters**

### **Clause 63: Privilege against self-incrimination not affected**

The clause in the Cth Act, providing that a person is not obliged to comply with the provisions of clauses 45 to 62, where to do so, entails self-incrimination, is unnecessary in the ACT.

### **Clause 63A: Damage to be minimised**

This clause provides that an authorised officer must take all reasonable steps to cause as little damage or detriment as practicable. Any damage must be recorded in writing and provided to the owner.

### **Clause 63B: Compensation to be paid in certain circumstances**

This clause provides that any damage or loss suffered by a person during an exercise, may claim compensation from the Territory in a court of competent jurisdiction. The court may make an order of reasonable compensation if it is satisfied that it is just to do so. This clause allows the making of a regulation to prescribe matters that may or may not be taken into account by the court regarding determination of what is just under the circumstances.

## **Part 10 Money**

### **Division 10.1 WELS account**

#### **Clause 64: WELS account**

The clause in the Commonwealth Act, establishing the WELS Account, is not necessary in the ACT.

**Clause 65: Credits to WELS account**

This clause requires all money appropriated or received for the purposes of, and in connection with, the WELS scheme to be held on Trust by the Territory for the Commonwealth.

**Clause 66: purpose of WELS account**

This clause identifies the purposes of the WELS Account as being to make payments for furthering the objects of the Act and for other reasons connected with the performance of the Regulator's functions and the administration of the Act and regulations.

**Division 10.2 Charging fees and recovery of amounts****Clause 67: Regulator may charge for services**

This clause enables the Regulator to charge fees for services provided in the performance of the Regulator's functions. This provides the option to run the scheme on a cost-recovery basis. It has been established (*Attorney-General v Wilts United Dairies Ltd* (1921) 38 TLR 781) that the imposition of fees or charges in respect of the performance of statutory duties needs to be authorised expressly by legislation or by necessary implication, which is the purpose of this clause. To avoid the imposition of taxation, any fees would be charged in respect of activities and services provided by the Regulator for the benefit of the fee payer, and the level of fees would be reasonably related to the costs of performing that function.

**Clause 68: Recovery of amounts**

This clause allows for the recovery of fees and other amounts payable to the State in connection with the WELS scheme as a debt due to the State.

**Part 11 – Review of decisions****Clause 69: Meaning of *reviewable decision* and *affected person***

This clause defines a "reviewable decision" as a decision by the Regulator to refuse to register a WELS product under clause 29 or to cancel or suspend the registration of a WELS product under clause 31. It also defines an "affected person" as a person whose application to register a WELS product has been refused or whose WELS product has had its registration cancelled or suspended.

**Clause 70: Notification of decisions and review rights**

This clause requires the Regulator to ensure that the affected person, in relation to a reviewable decision, is given written notice containing the terms of the decision, reasons for the decision and information regarding the person's review rights. Nevertheless, failure to comply with this provision does not affect the validity of the decision.

**Clause 71: Internal review**

This clause provides for an affected person to apply for internal review by the Regulator of a reviewable decision made by a delegate of the Regulator. The Regulator is then required to review the decision personally. The Regulator may affirm, vary or revoke the decision and substitute such other decision as he/she sees fit. An application for internal review must be made within 30 days of receipt of the decision by the applicant.

**Clause 72: Review of decisions by Administrative Appeals Tribunal**

This clause allows an affected person to apply to the Administrative Appeals Tribunal for review of a reviewable decision made by the Regulator or of an internal review decision made under clause 71. Sub-clause (2) limits the review right to the affected person only.

**Part 12 Miscellaneous****Clause 73: Compensation for damage to electronic equipment**

This clause requires the Regulator to pay compensation to the owner of electronic equipment or the user of data or programs, where in the course of the operation of such equipment as provided for in clause 49, damage or corruption results to the equipment, data recorded on the equipment or programs associated with the use of the equipment or data, arising from insufficient care being exercised by the person operating the equipment or in selecting that person to operate the equipment. Where the Regulator and the affected person disagree over the amount of the compensation, the person may take the matter to the Supreme Court to determine. In determining the compensation payable, the Court is to have regard to whether the occupier, or the

occupier's employees and agents had provided appropriate warning or guidance on the operation of the equipment.

#### **Clause 74: Compensation for acquisition of property**

This clause states that requires the Territory to pay reasonable compensation where operation of the Act would result in the acquisition of property from a person otherwise than on just terms as required under the Self- Government Act, section 23(1) . If the Territory and person do not agree to an amount in compensation, a reasonable sum may be determined by a proceeding in a court of competent jurisdiction.

#### **Clause 75: Annual report**

This clause requires the Minister to table in the Legislative Assembly within 6 sitting days each annual report of the Regulator received on the operation of the WELS scheme.

#### **Clause 76: Review of operation of WELS scheme**

This clause requires the Minister to table in the Legislative Assembly within 6 sitting days the report received of the independent review of the WELS scheme carried out under the Commonwealth Act after the scheme has been in operation for 5 years.

#### **Clause 77: Regulation-making power**

This clause provides for the making of regulations prescribing matters necessary or convenient to be prescribed for the purposes of the Act. This may include (but is not limited to) prescribing fees and penalties.