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

WATER EFFICIENCY LABELLING AND STANDARDS (ACT) BILL 2014

EXPLANATORY STATEMENT

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WATER EFFICIENCY LABELLING AND STANDARDS (ACT) BILL 2014

Overview of the Bill

The *Water Efficiency Labelling and Standards (ACT) Bill 2014* (the Bill) repeals and replaces the *Water Efficiency Labelling and Standards Act 2005* (the ACT WELS Act).

The Commonwealth WELS Act commenced in 2005 as part of a national commitment to the introduction of the water efficiency labelling and standards (WELS) Scheme. The WELS Scheme is intended to increase water conservation and to provide a strong market incentive for manufacturers to improve the water efficiency of products.

The original ACT WELS Act took the form of mirror legislation. Since 2005, the Commonwealth has made a number of reforms and amendments (particularly in 2012 and including legislative determinations) to the Commonwealth WELS Act, resulting in inconsistencies between the Acts.

This Bill adopts the Commonwealth WELS Act as an Act of the ACT. Amendments to the Commonwealth WELS Act will automatically apply in the ACT, unless the ACT takes action to prevent the amendments applying. The only exception to the adoption of the Commonwealth WELS Act is the matter of imprisonment for certain criminal offences whereby the ACT will substitute penalty units for six months imprisonment as per Schedule 1.

An identical situation has occurred with all other jurisdictions across Australia with a number of States and the Northern Territory having already enacted very similar legislation.

Human rights implications

The Commonwealth WELS Act 2005 contains strict liability offences - these were embedded into the *ACT Water Efficiency Labelling and Standards Act 2005* which at the time it was enacted were found to be human rights compatible.

On 23 July 2012, new compliance provisions in the Commonwealth WELS Act came into effect. These include new civil penalties and criminal offences as well as a range of new enforcement options in response to non-compliance matters. Civil penalties attract either 30 or 60 penalty units. Criminal offences attract either 30 or 60 penalty units or imprisonment. The offences apply both to corporations and individuals (e.g. sole traders and partnerships). A penalty unit is defined in the *Commonwealth Crimes Act 1914* and is currently \$110 for an individual or \$500 for a corporation. For the purposes of the Bill, the Commonwealth remains the WELS regulator and has a WELS inspectorate.

Sections 61 (Failure to give WELS information to WELS inspectors) and 62 (Failure to appear before a WELS inspector and failure to answer questions or provide material) of the Cth WELS Act have penalties of 6 months imprisonment. As noted above, these penalties have not been embedded within the Bill.

Nature of the right affected

The right affected relates to Section 22 of the *Human Rights Act (ACT) 2004* – that is everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Importance of the purpose of the limitation

Offences and civil provisions within the Bill are strict liability (as were those in the Commonwealth WELS 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 strict liability these provisions will be very difficult to enforce as the offences are centred on conduct rather than intent to commit that conduct. It would be very difficult to prove intention in relation to not registering a product or not labelling a product properly, and this would unnecessarily impede the efficient administration of justice.

Nature and extent of the limitation

Strict liability offences are commonly used in regulating industries and trades. For the purposes of the Bill, strict liability offences have been crafted to address unlawful behaviour in the context where the person knows, or ought to know, their legal obligations.

As WELS requires that specific products must be registered with the WELS Regulator and WELS-labelled for the purposes of supply, suppliers would be aware of their specific legal obligations under the Scheme. The Commonwealth WELS Act contains penalties of 6 months imprisonment (for failure to give WELS information to WELS inspectors; failure to appear before a WELS inspector; and failure to answer questions or provide material) which will impact on the right of presumption of innocence. Consistent with the position noted above that imprisonment is not to apply to offence provisions under the Act, the ACT Bill will use penalty units instead.

The strict liability offences within the Bill are not considered to unduly trespass upon personal rights and liabilities. It is important to note that the intent of imposing strict liability is not to criminalise innocent contraventions of the WELS but to strongly discourage actions that lead to excess urban water consumption that would further jeopardise the supply of this diminishing resource.

Relationship between the limitation and its purpose

Application of strict liability to the offences penalties within the Bill are within the scope of Justice and Community Safety Directorate's *'Guide for Framing Offences'* (April 2010).

Compliance by industry is vital to maintain the integrity of the WELS for producers, retailers and consumers, and also ensures that consumers have confidence in the water trade label (i.e. the information in the label is true and correct). The strict liability provisions remove the uncertainty that would otherwise be inherent in the labelling and standards regime and create a simpler – as well as more stringent - standard.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve

Offences are in line with practice in the Commonwealth and other Australian jurisdictions (NSW, Tasmania, and Northern Territory). The offences are considered appropriate to ensure the integrity of the regulatory regime as punishing offences not involving fault will deter prospective offenders.

Clause Notes

Part 1 Preliminary matters

Clause 1 Name of Act

This is the formal Clause which provides for the citation of the Bill. The Bill when passed will be cited as the *Water Efficiency Labelling and Standards (ACT) Act 2014*.

Clause 2 Commencement

This clause sets the commencement date for the Act as being the day after its notification.

Clause 3 Object of Act

This clause outlines the object of the Act which is to provide the Territory consistent legislation for the regulation of water efficiency labelling and standards. The legislation provides for the adoption of a uniform national approach. In doing so, the Act applies the Commonwealth water efficiency laws as a law of the Territory.

Clause 4 Dictionary

This clause provides the definitions for key terms and phrases used throughout the legislation. The Act defines *applied provisions* as being the Commonwealth water efficiency laws that apply as a law in the Territory because of this Act. The Dictionary is provided at the end of the Bill.

Clause 5 Notes

This clause identifies that notes included in the Act are explanatory and are not part of the Act.

Clause 6 Terms used in the *Water Efficiency Labelling and Standards Act 2005 (Commonwealth)*

This clause identifies that the terms used in this Act and the *Water Efficiency Labelling and Standards Act 2005 (Commonwealth)* have the same meaning.

Clause 7 Reference to Commonwealth Acts

This clause outlines that a reference to a Commonwealth Act includes a reference to the Commonwealth Act as amended from time to time, and if another Act is substituted for the Commonwealth Act – the substituted Act as amended and in force from time to time.

Part 2 Applied provisions

Clause 8 Application of Commonwealth laws as a law of the Territory

This clause adopts the Commonwealth water efficiency laws as a law of the Territory.

The Commonwealth water efficiency laws are the *Water Efficiency Labelling and Standards Act 2005*, the *Water Efficiency Labelling and Standards Regulations 2005* and any other legislative instrument in force under the Commonwealth Act.

Clause 9 Modification of Commonwealth water efficiency laws

This clause provides that regulations made under the Territory Act may modify the Commonwealth water efficiency laws as they apply as a law of the ACT. The regulations may also provide that the Commonwealth water efficiency laws apply under clause 8(1) as if amendments made to the laws had not taken effect. This enables the ACT to disallow amendments made by the Commonwealth, for example because those amendments are not in the interest of the ACT.

Clause 10 Interpretation of applied provisions

This clause provides that the *Commonwealth Acts Interpretation Act 1901* applies as a law of the Territory in relation to the interpretation of applied provisions of the Commonwealth water efficiency laws as adopted by this Act. Hence the ACT's Legislation Act does not apply to the applied provisions.

Part 3 Functions and powers under applied provisions

Clause 11 Functions and powers of Commonwealth Regulator and other authorities and officers

This clause provides that the WELS Regulator appointed under the *Commonwealth Water Efficiency Labelling and Standards Act 2005* (the Commonwealth Regulator) has the same functions and powers under the Territory laws as they have under the Commonwealth water efficiency laws. In addition, any other authorities and officers have the same functions and powers under the Territory laws as they have under the Commonwealth water efficiency laws.

Clause 12 Delegations by the Commonwealth Regulator

This clause provides that any delegation by the Commonwealth Regulator under the *Commonwealth Water Efficiency Labelling and Standards Act 2005* is taken to also be a delegation for the purposes of the corresponding provision of the Territory laws.

Part 4 Offences

This Part supports the object of the Act by providing that an offence against the applied provisions is to be treated as if it were an offence against a law of the Commonwealth. In this way the Commonwealth offence provisions can apply in the Territory. The provisions ensure that enforcement actions can consistently be taken with the outcome that no Territory resources are required for enforcement actions.

Clause 13 Object of Part 4

This clause states that the object of Part 4 of the Act is to further the objective of the Act by providing that an offence against Territory laws is to be treated as if it were an offence against a law of the Commonwealth.

The clause provides examples of the purposes for which an offence can be treated as a Commonwealth offence.

Clause 14 Application of Commonwealth criminal laws to offences against applied provisions

This clause applies the relevant Commonwealth laws as laws of the Territory in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth. The clause provides that Commonwealth criminal laws apply in relation to an offence against this Act.

In addition, the clause provides that, except as provided by the regulations under the Act, an offence against Territory laws is taken to be an offence against the laws of the Commonwealth and not an offence against the laws of the ACT.

Clause 15 Functions and powers conferred on Commonwealth officers and authorities relating to offences

This clause provides that a function or power in relation to an offence against the Commonwealth water efficiency laws conferred on a Commonwealth officer or authority by Commonwealth criminal laws is conferred on the officer or authority in relation to an offence against the corresponding provision of the applied provisions.

Clause 16 No double jeopardy for offences against applied provisions

This clause provides that a person is not liable to be punished for an offence under the applied provisions if the person has been punished for the same offence under the Commonwealth water efficiency laws.

Part 5 Administrative laws

Clause 17 Application of Commonwealth administrative laws to applied provisions

This clause applies the Commonwealth administrative laws as laws of the ACT to any matter arising in relation to the applied provisions, except as provided by the regulations under the Act.

The clause further provides that a matter arising in relation to the applied provisions is taken to be a matter arising in relation to the laws of the Commonwealth.

In addition, the clause provides that any provision of a Commonwealth administrative law applying because of this clause that purports to confer jurisdiction on a federal court is taken not to have that effect.

Clause 18 Functions and powers conferred on Commonwealth officers and authorities

This clause provides that a function or power conferred on a Commonwealth officer or authority by a Commonwealth administrative law applying because of clause 17 is also conferred on the officer or authority in relation to a matter arising in relation to the Commonwealth water efficiency laws.

Part 6 Miscellaneous matters

Clause 19 Things done for multiple purposes

This clause provides that a license, certificate or other thing issued given or done for the applied provision is not affected only because it was issued, given or done also for the purpose of the Commonwealth water efficiency laws.

Clause 20 Reference in Commonwealth law to a provision of another law

This clause provides that relevant supporting legislation also applies as a law of the Territory by virtue of its reference in a law of this Territory.

Clause 21 Fees and other money

This clause requires all monies payable under the Act and the applied provisions are to be paid to the Commonwealth. This is in accordance with the Water Efficiency Labelling and Standards Intergovernmental Agreement.

Clause 22 Regulations of Territory

This clause provides the Executive with the power to make regulations to assist, or provide direction in, the operation of this legislation. This clause also provides that a regulation may create an offence and fix maximum penalties of not more than 30 penalty unit for the offence.

Part 7 Repeal and Transitional matters

Clause 23 Act repealed

This clause repeals the *Water Efficiency Labelling and Standards Act 2005*.

Clause 24 Transitional matters

This formal clause ensures that anything that was in effect under the repealed Act continues in to be in effect under the new Act and the applied provisions.

Schedule 1 Modifications—Water Efficiency Labelling and Standards Act 2005 (Cwlth)

Schedule 1 provides for modifications to the application of the Commonwealth legislation. The modification is with respect to the criminal penalty for sections 51, 61 and 62. Instead of the penalty of 6 months in the Commonwealth legislation the maximum penalty in the ACT legislation is 60 penalty units.