

Water Efficiency Labelling and Standards Bill 2006

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee of the Whole)

**Water Efficiency Labelling and Standards
Bill 2006**

A Bill for

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

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Water Efficiency Labelling and Standards Act 2006*.

2. Commencement

- 5 (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days can be fixed under subsection (1) for different provisions.

3. Objects of Act

The objects of this Act are as follows —

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

4. Act to bind the Crown

- (1) This Act binds the Crown in right of the State and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- 20 (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

5. External Territories

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

5A. Numbering

In order to maintain consistent numbering between this Act and the *Water Efficiency Labelling and Standards Act 2004* of the Commonwealth —

- 5 (a) if the Commonwealth Act contains a section that is not required 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
- 10 (b) if this Act contains a section that is not included in the Commonwealth Act, the section is numbered so as to maintain consistency in numbering between sections common to both Acts.

15 Note 1: A note appears under each heading of a kind referred to in paragraph (a) describing the omitted section of the Commonwealth Act.

 Note 2: A note appears under each section of a kind referred to in paragraph (b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.

20 Note 3: Some sections contained in the Commonwealth Act and included in this Act have been modified for consistency with State law and practice.

 Note 4: This section does not appear in the Commonwealth Act.

5B. Notes

25 Notes in this Act are provided to assist understanding and do not form part of the Act.

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

Part 2 — Interpretation

6. Application of the Criminal Code

Note: The Commonwealth Act section 6 applies Chapter 2 of the Criminal Code of the Commonwealth to offences against that Act.

5 **7. Definitions**

(1) In this Act —

“**AAT**” means the Administrative Appeals Tribunal established by the AAT Act;

10 “**AAT Act**” means the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

“**affected person**” has the meaning given to that term in section 69(2) and (3);

“**agency**” —

15 (a) in relation to the Commonwealth, includes the following —

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

20 (ii) a body corporate established for a public purpose under a law of the Commonwealth;

and

(b) in relation to this or another State or a Territory, includes the following —

25 (i) a Department of State (however described) of the State or Territory;

(ii) a body corporate established for a public purpose under a law of the State or Territory;

“**applicable WELS standard**” has the meaning given to that term in section 32;

30 “**Commonwealth Act**” means the *Water Efficiency Labelling and Standards Act 2004* of the Commonwealth;

- 5 **“Commonwealth Minister”** has the meaning given to that term
 in the Commonwealth Act;
- “corresponding law”** has the meaning given to that term in
 section 12;
- 5 **“damage”**, in relation to data, includes damage by erasure of
 data or addition of other data;
- “evidential material”** means any thing that may be relevant to
 the investigation or prosecution of an offence against
 this Act;
- 10 **“occupier”**, in relation to premises, includes a person who
 apparently represents the occupier of the premises;
- “person who has WELS information”** has the meaning given
 to that term in section 60;
- “registered”** means registered under a WELS standard;
- 15 **“Regulator”** means the Regulator established by the
 Commonwealth Act section 21;
- “reviewable decision”** has the meaning given to that term in
 section 69(1);
- “supply”** means —
- 20 (a) supply for consideration; or
 (b) offer to supply for consideration;
- “water saving product”** means a device, appliance or fitting
 that —
- 25 (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;
- 30 **“WELS account”** means the Special Account established by
 the Commonwealth Act section 64(1);
- “WELS business premises”** means WELS premises that are
 open to the public on a regular basis;

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“**WELS inspector**” means a person appointed under section 45(1);

“**WELS labelled**” has the meaning given to that term in section 20(1);

5 “**WELS premises**” means premises used for, or in connection with, the supply of one or more WELS products;

“**WELS product**” has the meaning given to that term in the Commonwealth Act section 18(1);

10 “**WELS scheme**” means the water efficiency labelling and standards scheme established by this Act and corresponding laws;

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

15 (2) A reference in this Act to the Commonwealth Act or to a corresponding State-Territory law within the meaning of the Commonwealth Act is a reference to that Act or law —

(a) as amended and in force for the time being; and

20 (b) as re-enacted (and, if subsequently amended, as amended) and in force for the time being.

(3) In this Act a fine expressed as a number of penalty units is a fine of the amount calculated in accordance with the following formula —

$$A \times B$$

25 where —

A is that number of penalty units; and

B is the amount (in dollars) that is for the time being a penalty unit under section 4AA of the *Crimes Act 1914* of the Commonwealth.

30 Note: This section differs from the Commonwealth Act section 7.

Part 3 — National WELS scheme

8. WELS scheme to be a national cooperative scheme

5 It is the intention of the Parliament 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 this Act

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

10. Relationship to other State laws

10 The provisions of this Act are in addition to, and do not limit or derogate from, the provisions of any other written law.

11. State and Territory laws may operate concurrently

15 Note: The Commonwealth Act includes a provision allowing State laws to operate concurrently with that Act.

12. Meaning of “corresponding law”

For the purposes of this Act —

“corresponding law” means —

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

13. Commonwealth consent to conferral of functions etc. on the Regulator or inspectors by corresponding laws

25 Note: The Commonwealth Act section 13 provides Commonwealth consent to the conferral of functions or powers, or the imposition 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 section 14 deals with the imposing of duties on the Regulator or WELS inspectors by corresponding State-Territory laws.

5 **15. When a corresponding State-Territory law imposes a duty**

Note: The Commonwealth Act section 15 provides a definition of the phrase "imposes a duty" for the purposes of sections 13 and 14 of that Act.

16. No doubling up of liabilities

10 Note: The Commonwealth Act section 16 avoids the doubling up of liabilities under this Act and the Commonwealth Act. In this State the *Sentencing Act 1995* section 11(2) operates so that a person who has been sentenced for an offence under the Commonwealth Act cannot be sentenced for the corresponding offence under this Act.

15 **17. Review of decisions under this Act**

Note: The Commonwealth Act section 17 provides for the review of State-Territory decisions by the AAT. The review of decisions under this Act is dealt with in section 72.

Part 4 — WELS products and WELS standards

18. WELS products

5 Note: The Commonwealth Act section 18 enables 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

10 Note: The Commonwealth Act section 19 states what must be set out in WELS standards and enables 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

- 15 (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) Such requirements may relate to one or more of the following —
- 20 (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 connection with, the supply of the product;
- (c) advertising the product.

Part 5 — The WELS Regulator

21. The Regulator

5 Note: The Commonwealth Act section 21 appoints the Secretary of the Department of State of the Commonwealth that deals with the matters to which the Commonwealth Act relates as the Regulator.

22. Functions of the Regulator

The Regulator has the following functions —

- 10 (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;
- 15 (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 to —
- (i) the Minister;
- 20 (ii) the agency principally assisting the Minister in the administration of this Act; and
- (iii) the public,
- about the operation of the WELS scheme;
- (h) to undertake or commission research in relation to the effectiveness of WELS standards in relation to reducing water usage;
- 25 (i) such other functions as are conferred on the Regulator by this Act, the regulations or any other law.

23. Powers of the Regulator

Subject to this Act, the Regulator has power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

5 **24. Arrangements with other agencies**

10 The Regulator may make an arrangement with an agency of the State for the services of officers or employees of the agency to be made available to assist the Regulator in the performance of the functions or duties, or the exercise of the powers, of the Regulator.

25. Delegation

- 15 (1) The Regulator may, by writing, delegate one or more of the Regulator's powers or functions under this Act to one or more of the following —
- (a) an officer or employee of an agency of the State;
 - (b) an officer or employee of an agency of the Commonwealth;
 - (c) an officer or employee of an agency of another State or a Territory.
- 20 (2) However, the Regulator must not delegate a power or function, under subsection (1), to an officer or employee of an agency of the State without the agreement of the State.

25 Note: The Commonwealth Act section 25(3) states that a delegate of the Regulator "is, in the exercise of the delegate's delegated powers and functions, subject to the Regulator's directions". In this State the *Interpretation Act 1984* section 59(1)(b) states that a delegation under a written law "may be made subject to such conditions, qualifications, limitations or exceptions as the person so delegating may specify".

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.

5 Note 1: A WELS standard may require products to be registered for the purposes of specified supplies: see the Commonwealth Act section 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 section 33.

10 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 the Commonwealth Act section 19(4). It is an offence to supply a product that is not WELS labelled if WELS labelling requirements apply: see section 34.

15 Note 2: Section 39A 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 the purposes of subsection (1) and section 31(3)(b) if that person would be taken to be the manufacturer of the product for the purposes of the Commonwealth Act sections 26(1) and 31(3)(b).

Note: This section differs from the Commonwealth Act section 26.

27. Documentation etc. to be provided with application for registration

- 25 (1) An application for registration of a WELS product must be made in the manner and form determined in writing by the Commonwealth Minister under the Commonwealth Act section 27(1), and must be accompanied by —

- 30 (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 referred to in subsection (1) may also specify conditions that must be complied with in order for a product to remain registered.

Note: This section differs from the Commonwealth Act section 27.

5 **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
- 10 under section 29,

the Regulator must, by notice published in the *Commonwealth of Australia Gazette*, register the product.

- (2) The Regulator must give the applicant written notice of the registration or refusal.

- 15 (3) If, at the end of the period of 3 months that begins on the day on which the application is made —

- (a) a notice registering the product has not been published in the *Commonwealth of Australia Gazette*; and
 - (b) the applicant has not been notified, under subsection (2),
- 20 that the Regulator has refused to register the product,

the Regulator is taken to have refused to register the product.

29. Grounds for refusing to register

The Regulator may refuse to register a WELS product if —

- 25 (a) the application is not made in accordance with the applicable determination under the Commonwealth Act section 27(1);
 - (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
- 30 or minimum general performance requirement that the

s. 30

product is required to satisfy by the WELS standard for products of that kind.

30. Period of registration

- 5 (1) Unless subsection (2) applies, 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 period of 5 years that begins on the day on which the product is registered ends.
- 10 (2) If —
- (a) a WELS product is registered under a WELS standard (“**the first WELS standard**”); and
 - (b) the first WELS standard is replaced,
- 15 the product remains registered under the first WELS standard until the first of the following happens —
- (c) the product is registered under a WELS standard other than the first WELS standard;
 - (d) the period of one year that begins on the day on which the first WELS standard was replaced ends.
- 20 (3) If the Commonwealth Minister, by writing, determines that, for specified purposes, the period of one year mentioned in the Commonwealth Act section 30(2)(d) is extended by a further specified period, the period of one year mentioned in subsection (2)(d) of this section is extended for the same
- 25 purposes by the same further period.

31. Cancelling or suspending registration

- (1) The Regulator may, by notice published in the *Commonwealth of Australia Gazette*, cancel or suspend the registration of a WELS product if —
- 30 (a) registration conditions are not complied with (see section 27(2)); or

- 5
- (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.
- 10 (3) The Regulator must, by notice published in the *Commonwealth of Australia Gazette*, cancel the registration of a WELS product if —
- 15 (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 the supply of WELS products

Division 1 — Applicable WELS standards

32. Meaning of applicable WELS standard

- 5 (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
10 determination made under the Commonwealth Act section 18(1) that relates to products of that kind.

Division 2 — Registration and labelling

33. Registration requirement

A person commits an offence if —

- 15 (a) the person supplies a WELS product;
- (b) the applicable WELS standard requires the product to be registered for the purposes of the supply; and
- (c) the product is not registered.

Penalty: a fine of 60 penalty units.

34. Labelling registered products

A person commits an offence if —

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

Penalty: a fine of 60 penalty units.

Division 3 — Minimum efficiency and performance requirements

35. Minimum water efficiency — products required to be registered

- 5 A person commits an offence if —
- (a) the person supplies a WELS product;
 - (b) the applicable WELS standard requires the product —
 - (i) to be registered for the purposes of the supply;
and
 - 10 (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.

15 Penalty: a fine of 60 penalty units.

36. Minimum general performance — products required to be registered

- A person commits an offence if —
- (a) the person supplies a WELS product;
 - 20 (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;
 - 25 and
 - (c) the product does not comply with those minimum general performance requirements.

Penalty: a fine of 60 penalty units.

Division 4 — Misuse of WELS standards etc.

37. Misuse of WELS standards and information

A person commits an offence if the person —

- (a) supplies a WELS product;
- 5 (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 manner that is inconsistent with the standard.

10 Penalty: a fine of 60 penalty units.

38. Information inconsistent with WELS standards

A person commits an offence if —

- (a) the person uses information for, or in relation to, the supply of a WELS product; and
- 15 (b) the information is inconsistent with the information contained in the applicable WELS standard for the product.

Penalty: a fine of 60 penalty units.

39. Using information in the supply of products

20 (1) For the purposes of sections 37 and 38, information is used for, or in relation to, the supply of a product if the information is conveyed on, or by —

- (a) a label attached to the product;
- (b) the packaging in which the product is supplied;
- 25 (c) any document or other material used for, or provided in connection with, 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 sections 37 and 38.

Division 5 — False or misleading information or document

39A. False or misleading information or document

A person must not —

- 5
- (a) in connection with an application made to the Regulator under this Act; or
 - (b) in compliance or purported compliance with this Act (other than Part 9 Division 4),

do either of the following —

- 10
- (c) give information (whether orally or in writing) that the person knows to be false or misleading in a material particular;
 - (d) produce a document that the person knows to be false or misleading in a material particular without —
 - 15 (i) indicating to the person to whom the document is produced that it is false or misleading, and the respect in which it is false or misleading; and
 - (ii) providing correct information to that person, if the person producing the document is in possession of, or can reasonably acquire, the correct information.
- 20

Penalty: a fine of 60 penalty units or imprisonment for one year.

Note: This section does not appear in the Commonwealth Act but provisions to the same effect (except as to penalty) are included in Part 7.4 of the Criminal Code of the Commonwealth.

Part 8 — Other enforcement

Division 1 — Infringement notices

40. Infringement notices

5 (1) A WELS inspector who has reason to believe that a person has committed a prescribed offence under Part 7 Division 2, 3 or 4 may, not more than 12 months after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender.

10 (2) An offence cannot be prescribed under this section if it is punishable by imprisonment.

Note: This section differs from the Commonwealth Act section 40.

40A. Content of notice

15 (1) An infringement notice is to be in the prescribed form and is to —

- 15 (a) contain a description of the alleged offence;
- 20 (b) advise that if the alleged offender does not wish to have a complaint of the alleged offence heard and determined by a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to the Regulator within a period of 28 days after the giving of the notice; and
- (c) inform the alleged offender as to how and where the modified penalty may be paid.

25 (2) In an infringement notice the amount specified as being the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

30 (3) The modified penalty that may be prescribed for an offence is not to exceed 20% of the maximum penalty that could be imposed for that offence by a court.

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

40B. Extension of time

The Regulator may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

5

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

40C. Withdrawal of notice

(1) The Regulator may, whether or not the modified penalty has been paid, withdraw an infringement notice by sending to the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

10

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount is to be refunded.

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

40D. Benefit of paying modified penalty

15

(1) Subsection (2) applies if the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn.

(2) If this subsection applies it prevents the bringing of proceedings and the imposition of penalties to the same extent that they would be prevented if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

20

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

25

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

40E. Application of penalties collected

An amount paid as a modified penalty is, subject to section 40C(2), to be dealt with as if it were a penalty imposed by a court as a penalty for an offence.

30

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

40F. Production of identity card

5 A WELS inspector is to produce the identity card issued to the inspector under section 46 whenever required to do so by a person to whom an infringement notice has been or is about to be given.

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

Division 2 — Publicising offences

41. Regulator may publicise offences

- 10 (1) The Regulator may publicise, in any way the Regulator thinks appropriate, an offence against this Act for which a person has been convicted.
- (2) This Division does not —
- 15 (a) limit the Regulator's powers to publicise an offence against this Act;
- (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 3 — Enforceable undertakings

20 **42. Acceptance of undertakings**

- (1) The Regulator may accept a written undertaking given by a person in connection with a matter relating to —
- 25 (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 consent of the Regulator.

43. Enforcement of undertakings

- 5 (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 a term of the undertaking, the Court may make one or more of the following orders —
- 10 (a) an order directing the person to comply with that term of the undertaking;
- (b) an order directing the person to pay to the State 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;
- 15 (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

20 Note: The Commonwealth Act section 43 confers a similar power to enforce undertakings on the Federal Court of Australia.

Division 4 — Injunctions

44. Injunctions

- 25 (1) If a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute, an offence against this Act, the Supreme Court may, on the application of the Regulator, grant an injunction —
- (a) restraining the person from engaging in the conduct; or
- (b) requiring the person to do an act or thing.
- 30 (2) On an application, the Court may, if it thinks it appropriate, grant an injunction by consent of all parties to the proceedings, whether or not the Court is satisfied that the person has

engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute, an offence against this Act.

- 5 (3) The Court may, if it thinks it desirable, grant an interim injunction pending its determination of an application.
- (4) The Court is not to require the Regulator or anyone else, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (5) The Court may discharge or vary an injunction it has granted.
- 10 (6) The power to grant or vary an injunction restraining a person from engaging in conduct may be exercised —
- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in such conduct; and
- 15 (b) whether or not the person has previously engaged in such conduct.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised —
- 20 (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
- (b) whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person
- 25 if the person refuses or fails to do that act or thing.

Note: The Commonwealth Act section 44 confers a similar power to grant injunctions on the Federal Court of Australia.

Part 9 — WELS inspectors

Division 1 — Appointment of WELS inspectors

45. Regulator may appoint WELS inspectors

- 5 (1) The Regulator may, by writing, appoint any of the following as a WELS inspector —
- (a) an officer or employee of an agency of the State;
 - (b) an officer or employee of an agency of the Commonwealth.
- 10 (2) However, the Regulator must not appoint an officer or employee of an agency of the State as a WELS inspector without the agreement of the State.
- (3) In exercising powers or performing functions a WELS inspector must comply with any direction of the Regulator.

Note: This section differs from the Commonwealth Act section 45.

46. Identity cards

- 15 (1) The Regulator must issue an identity card to each WELS inspector.
- (2) The identity card must —
- 20 (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;
 - (b) the person ceases to be a WELS inspector; and
 - 25 (c) the person does not return the identity card to the Regulator as soon as practicable.

Penalty: a fine of one penalty unit.

(4) A WELS inspector must carry his or her identity card at all times when exercising powers or performing functions as a WELS inspector.

5 (5) A WELS inspector is not entitled to exercise any powers 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

10 (b) the WELS inspector fails to comply with the requirement.

Note: This section differs from the Commonwealth Act section 46.

46A. Offences in relation to WELS inspectors

(1) A person must not hinder or obstruct a WELS inspector who is exercising a power under this Act.

15 Penalty: a fine of 60 penalty units.

(2) A person who is not a WELS inspector must not, in any way, hold himself or herself out to be a WELS inspector.

Penalty: a fine of 60 penalty units.

20 Note: This section does not appear in the Commonwealth Act but provisions to the same effect (except as to penalty) are included in Part 7.8 of the Criminal Code of the Commonwealth.

Division 2 — Powers of WELS inspectors

47. Purposes for which powers can be used

25 A WELS inspector may exercise the powers set out in this Division for the following purposes —

(a) determining whether a person is complying with this Act;

(b) investigating a possible offence against this Act.

48. Inspection powers — public areas of WELS business premises

- 5 (1) For the purposes set out in section 47, a WELS inspector may do one or more of the following in a public area of WELS business premises when the premises are open to the public —
- 10 (a) inspect WELS products;
 - (b) purchase 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 any person;
 - (e) observe practices relating to the supply of products.
- 15 (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 those powers.
- 20 (2) Before obtaining consent, the WELS inspector must inform 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 one or more of the following —
- 25 (a) search the premises and any thing (including a vehicle) on the premises;
 - (b) inspect, examine, take measurements of or conduct tests on any thing on the premises;

- 5
- (c) take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
- (d) inspect any book, record or document on the premises;
- (e) take extracts from or make copies of any such book, record or document;
- (f) take onto the premises such equipment and materials as the WELS inspector requires for the purposes of exercising powers in relation to the premises;
- 10 (g) operate equipment on the premises for the purposes of gaining access to a document or record relating to one or more WELS products.

50. Refusing consent is not an offence

15 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.

20 **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.
- 25 (2) For the purposes set out in section 47, a WELS inspector who enters WELS premises under warrant may do one or more of the following —
- (a) exercise one or more of the powers set out in section 49(3);
- (b) require any person on the premises to —
- 30 (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 —
- 5 (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.
- Penalty: a fine of 60 penalty units.

10 **52. Announcement before entry under warrant**

- (1) A WELS inspector must, before entering WELS premises under a warrant —
- (a) announce that he or she is authorised to enter the premises; and
- 15 (b) give any person 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 WELS 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.
- 20

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 —
- 25 (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

A person commits an offence if —

- 5 (a) the person is the occupier of WELS premises;
- (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.

10 Penalty: a fine of 30 penalty units.

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.
- 15 (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
20 of the following occurs —
- (a) the material is no longer needed for the purposes for which it was seized or secured;
- (b) the period of 90 days that begins on the day on which the material was seized or secured ends.

25 56. Holding evidential material for more than 90 days

- (1) Despite section 55(4)(b), the Regulator may —
- (a) apply to the Magistrates Court for an order allowing possession or control of evidential material for such further period as is specified in the order; and

(b) if the Magistrates Court makes such an order — so retain possession or control of the material.

(2) In determining the application, the Magistrates Court must allow the owner of the material to appear and be heard.

5 (3) The Magistrates Court must not make an order allowing possession or control of the material for a further period unless it is satisfied that the order is necessary for the purposes of prosecuting an offence against this Act.

57. Returning evidential material

10 If the Regulator cannot, despite making reasonable efforts, locate the owner of evidential material, the Regulator may dispose of the material in such manner as the Regulator thinks appropriate.

Division 3 — Applying for warrants to enter WELS premises

15 **58. Ordinary warrants**

(1) A WELS inspector may apply to a magistrate for the issue of a search warrant in relation to particular WELS premises.

(2) The magistrate may issue the warrant if the magistrate is satisfied, by evidence on oath or by affidavit, that it is necessary
20 to enter the WELS premises for one or more of the following purposes —

(a) determining whether a person is complying with this Act;

(b) investigating a possible offence against this Act.

25 (3) However, the magistrate must not issue the warrant unless the WELS inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

- (4) The warrant must —
- (a) authorise the WELS inspector to enter the premises using such assistance and such force to enter the premises as is necessary and reasonable;
 - 5 (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
 - (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have
10 effect; and
 - (d) state the purpose for which the warrant is issued.

59. Warrants by telephone, fax or other electronic means

- (1) If, in an urgent case, a WELS inspector considers it necessary to
15 do so, the WELS inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 58.
- (2) The magistrate may —
- (a) require communication by voice to the extent that it is practicable in the circumstances; and
 - 20 (b) make a recording of the whole or any part of any such communication by voice.
- (3) Before applying for the warrant, the WELS inspector must prepare an affidavit of the kind mentioned in section 58(2) that sets out the grounds on which the warrant is sought.
- 25 (4) If it is necessary to do so, the WELS inspector may apply for the warrant before the affidavit is sworn or affirmed.
- (5) If the magistrate is satisfied —
- (a) after having considered the terms of the affidavit; and

- (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought,

5 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) If the magistrate completes and signs the warrant —

- (a) the magistrate must —

- 10 (i) tell the WELS inspector what the terms of the warrant are;
- (ii) tell the WELS inspector the day on which and the time at which the warrant was signed;
- 15 (iii) tell the WELS inspector the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
- (iv) record on the warrant the reasons for issuing the warrant;

20 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
- 25 (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(7) 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 —

30

- (a) the form of warrant completed by the WELS inspector; and

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- (b) the affidavit referred to in subsection (3), which must have been duly sworn or affirmed.
- (8) When the magistrate receives those documents, the magistrate must —
- 5 (a) attach them to the warrant that the magistrate completed and signed; and
- (b) deal with them in the way in which the magistrate would have dealt with them if the application had been made under section 58.
- 10 (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If —
- 15 (a) it is material, in any proceedings, 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,
- 20 the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

Division 4 — Giving WELS information to WELS inspectors

60. Meaning of person who has WELS information

25 A person is a person who has WELS information if the Regulator believes, on reasonable grounds, that the person is capable of giving information, or producing books, records or documents, relevant for the purposes of investigating or preventing an offence against this Act.

61. Regulator may require a person to provide information

- 30 (1) The Regulator may, by written notice, require a person who has WELS information to give to the WELS inspector specified in

the notice, and in the manner and within the period specified in the notice —

- (a) such information as is specified in the notice; or
 - (b) any book, record or document that is specified in the notice.
- 5
- (1a) The period specified in a notice under subsection (1) must end not less than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of section 62A.
- 10 (3) A person commits an offence if —
- (a) the person is required to give information or a book, record or document to a WELS inspector under subsection (1); and
 - (b) the person does not give the WELS inspector the information, book, record or document.
- 15

Penalty: a fine of 60 penalty units.

62. Regulator may require a person to appear before a WELS inspector

- 20 (1) The Regulator may, by written notice, require a person who has WELS information to appear before the WELS inspector specified in the notice, at a time and place specified in the notice —
- (a) to answer any questions put by the WELS inspector; and
 - (b) to produce to the WELS inspector such books, records or documents as are referred to in the notice.
- 25
- (1a) The time specified in a notice under subsection (1) must not be earlier than 14 days after the notice is given.
- (2) A notice under subsection (1) must set out the effect of section 62A.

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(3) A person commits an offence if —

- (a) the person is required to appear before a WELS inspector under subsection (1); and
- (b) the person does not appear before the WELS inspector.

5 Penalty: a fine of 60 penalty units.

(4) A person commits an offence if —

- (a) the person is required under subsection (1) to appear before a WELS inspector; and
- (b) when appearing before the WELS inspector, the person does not —
 - 10 (i) answer a question put by the WELS inspector; or
 - (ii) produce a book, record or document to the WELS inspector as required by notice given under that subsection.

15 Penalty: a fine of 60 penalty units.

62A. False or misleading information or documents

(1) A person commits an offence if —

- (a) the person gives information to a WELS inspector under section 61(1) or 62(1); and
- 20 (b) the person does so knowing that the information —
 - (i) is false or misleading in a material particular; or
 - (ii) omits any matter or thing without which the information is misleading in a material particular.

25 Penalty: a fine of 60 penalty units.

(2) A person commits an offence if —

- (a) the person produces a book, record or document to a WELS inspector under section 61(1) or 62(1); and

- (b) the person does so knowing that the document is false or misleading in a material particular.

Penalty: a fine of 60 penalty units.

- 5 (3) Subsection (2) does not apply to a person who produces a book, record or document if the book, record or document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate —

10 (a) stating that the book, record or document is, to the knowledge of the first mentioned person, false or misleading in a material particular; and

(b) setting out, or referring to, the material particular in which the book, record or document is, to the knowledge of the first mentioned person, false or misleading.

Note: This section does not appear in the Commonwealth Act but provisions to the same effect (except as to penalty) are included in Part 7.4 of the Criminal Code of the Commonwealth.

Division 5 — Privilege against self incrimination

20 **63. Privilege against self incrimination not affected**

25 Nothing in this Part affects the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate the person or make the person liable to a penalty, and the person does not commit an offence under section 46A(1) by so refusing.

Note: This section differs from the Commonwealth Act section 63.

Part 10 — Money

Division 1 — The WELS Account

64. WELS Account

Note: The Commonwealth Act section 64 establishes the WELS Account.

5 **65. Credits to the WELS Account**

(1) Money received by the State —

(a) in respect of fines or modified penalties for offences against this Act;

(b) in respect of undertakings given under section 42; or

10 (c) under Division 2,

must be paid into the Consolidated Fund.

(2) The Treasurer must pay amounts equal to money paid into the Consolidated Fund under subsection (1) to the Commonwealth for crediting to the WELS Account.

15 (3) The Consolidated Fund is appropriated to the necessary extent to enable amounts to be paid to the Commonwealth in accordance with subsection (2).

Note: This section differs from the Commonwealth Act section 65.

66. Purpose of the WELS Account

20 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 performance of the Regulator's functions under this Act or a corresponding law.

25

Division 2 — Charging fees and recovering fees and other amounts

67. Regulator may charge for services

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

68. Recovery of amounts

The following amounts may be recovered in a court of competent jurisdiction as debts due to the State —

- 10
- (a) fees payable to the State under this Act or a corresponding law;
 - (b) amounts payable to the State in connection with the performance of the Regulator's functions under this Act.

Part 11 — Review of decisions

69. Meaning of reviewable decision and affected person

- (1) Each of the following decisions is a reviewable decision —
- 5 (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
- 10 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

- 15 (1) The Regulator must, as soon as practicable after making a reviewable decision, cause a notice in writing to be given to the affected person in relation to the decision, containing —
- (a) the terms of the decision;
- (b) the reasons for the decision; and
- 20 (c) a statement setting out particulars of the person’s review rights.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

71. Internal review

- 25 (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 on which the decision first came to the notice of the applicant, or within such further period (if any) as the Regulator, either before or after the end of that period, allows.
- 5 (3) The Regulator must, on receiving an application, review the reviewable decision personally.
- (4) The Regulator may —
- (a) make a decision affirming, varying or revoking the reviewable decision; and
- 10 (b) if the Regulator revokes the decision, make such other decision as the Regulator thinks appropriate.

72. Review of decisions by AAT

- (1) Application may be made to the AAT for review of —
- 15 (a) a reviewable decision made by the Regulator personally; or
- (b) an internal review decision made by the Regulator under section 71,
- if the decision is declared by the regulations made under the Commonwealth Act to be a reviewable State-Territory decision for the purposes of the Commonwealth Act section 17.
- 20 (2) The AAT Act (excluding Part IVA) and the regulations in force for the time being under that Act apply as laws of the State in relation to reviewable decisions as if this Act were a law of the Commonwealth and not a law of this State.
- 25 (3) For the purposes of this section, a reference in a provision of the AAT Act (as that provision applies as a law of the State) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.
- 30 (4) An application under subsection (1) may be made only by the affected person concerned.
- (5) Subsection (4) has effect despite the AAT Act section 27(1).

Part 12 — Miscellaneous

73. Compensation for damage to electronic equipment

- (1) This section applies if —
- 5 (a) as a result of electronic equipment being operated as mentioned in section 49 —
- (i) damage is caused to the equipment;
- (ii) the data recorded on the equipment is damaged; or
- 10 (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 occurs because —
- 15 (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, such reasonable compensation for the damage or corruption as the owner or user agree on.
- 20
- (3) However, if the owner or user and the Regulator fail to agree, the owner or user may institute proceedings in the Supreme Court for such reasonable amount of compensation as the Court determines.
- 25
- (4) In determining the amount of compensation payable, regard is to be had 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.

74. Compensation for acquisition of property

Note: The Commonwealth Act section 74 provides for payment of compensation by the Commonwealth for acquisition of property.

75. Annual report

5 The Minister must cause a copy of each annual report of the Regulator on the operation of the WELS scheme given to the State under the Commonwealth Act section 75 to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

10 Note: The Commonwealth Act section 75 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 the State.

76. Review of operation of WELS scheme

15 The Minister must cause a copy of the report of the independent review of the WELS scheme given to the State under the Commonwealth Act section 76 to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

20 Note: The Commonwealth Act section 76 provides for an independent review of the operation of the WELS scheme to be undertaken as soon as possible after the fifth anniversary of the commencement of that section. The Commonwealth Minister is required to give a copy to the State.

25 77. Regulations

- (1) The Governor may make regulations prescribing matters —
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- 30 (2) Without limiting subsection (1), the regulations may —
- (a) prescribe fees in respect of matters under this Act; and

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- (b) prescribe penalties of not more than 50 penalty units for offences against the regulations.

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