



Queensland

Water Efficiency Labelling and Standards Act 2005

Act No. 69 of 2005



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Queensland

Water Efficiency Labelling and Standards Act 2005

Act No. 69 of 2005

**An Act to provide for water efficiency labelling and the making
of water efficiency standards**

[Assented to 8 December 2005]

The Parliament of Queensland enacts—**Part 1 Preliminary****1 Short title**

This Act may be cited as the *Water Efficiency Labelling and Standards Act 2005*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Note—

This section differs from section 2 of the Commonwealth Act.

3 Objects of Act

The objects of this Act are as follows—

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

4 Act binds all persons

- (1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act renders the Commonwealth or a State liable to be prosecuted for an offence.

Note—

This section differs from section 4 of the Commonwealth Act.

5 External Territories

Note—

Under section 5 of the Commonwealth Act, that Act extends to every external Territory other than Norfolk Island.

5A Numbering

- (1) In order to maintain consistent numbering between this Act and the Commonwealth Act—
 - (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
 - (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.
- (2) A provision number and heading referred to in subsection (1)(a) form part of this Act.

Notes—

- 1 A note appears under each heading of a kind referred to in subsection (1)(a) describing the omitted section of the Commonwealth Act.
- 2 A note appears under each section of a kind referred to in subsection (1)(b) highlighting the non-appearance of an equivalent section in the Commonwealth Act.
- 3 This section does not appear in the Commonwealth Act.

5B Notes in text

A note in the text of this Act is not part of this Act.

Note—

This section does not appear in the Commonwealth Act.

6 Application of the Criminal Code

Notes—

- 1 Under section 6 of the Commonwealth Act, chapter 2 of the *Criminal Code* (Cwlth) applies to offences against that Act.
- 2 The Criminal Code of Queensland applies for the purposes of this Act.
- 3 Penalties prescribed under this Act are expressed in Queensland penalty units.

Part 2 Interpretation

7 Definitions

The dictionary in the schedule defines particular words used in this Act.

Note—

This section differs from section 7 of the Commonwealth Act.

Part 3 National WELS scheme

8 WELS scheme to be a national cooperative scheme

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

Note—

This section differs from section 8 of the Commonwealth Act.

9 Application of this Act

Note—

Section 9 of the Commonwealth Act provides for the application of that Act.

10 Relationship to other State laws

This Act is in addition to, and not in substitution for, any other law of the State, whether passed or made before or after the commencement of this section.

Note—

Section 10 of the Commonwealth Act deals with the relationship of that Act to other Commonwealth laws.

11 State and Territory laws may operate concurrently

Note—

Section 11 of the Commonwealth Act allows State laws to operate concurrently with that Act.

12 Meaning of *corresponding law*

A *corresponding law* means—

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

Note—

This section differs from section 12 of the Commonwealth Act.

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

Note—

Section 13 of the Commonwealth Act provides for 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—

Section 14 of the Commonwealth Act deals with the imposition of duties on the regulator or WELS inspectors by corresponding State-Territory laws.

15 When a corresponding State-Territory law imposes a duty

Note—

Section 15 of the Commonwealth Act 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

(1) If—

- (a) an act or omission is an offence against this Act and is also an offence against the Commonwealth Act; and
- (b) the offender has been punished for the offence under the Commonwealth Act;

the offender is not liable to be punished for the offence under this Act.

(2) If a person has been ordered to pay a pecuniary penalty under the Commonwealth Act, the person is not liable to a pecuniary penalty under this Act for the same conduct.

Note—

This section differs from section 16 of the Commonwealth Act.

17 Review of decisions under this Act

- (1) A person may apply to the Administrative Appeals Tribunal established under the Administrative Appeals Tribunal Act for review of a reviewable decision if the decision is declared under the regulations made under the Commonwealth Act to be a reviewable State-Territory decision for the Commonwealth Act, section 17.
- (2) The Administrative Appeals Tribunal Act, other than part IVA, and the regulations in force under that Act apply as laws of the State for reviewable decisions.
- (3) For this section, a reference in a provision of the Administrative Appeals Tribunal Act, as the provision applies as a law of the State, to all or any part of part IVA of that Act is taken to be a reference to all or part of that part as it has effect as a law of the Commonwealth.

Notes—

- 1 The regulations in force mentioned in subsection (2) are those in force from time to time. See the *Acts Interpretation Act 1954*, section 14H(2) and the *Statutory Instruments Act 1992*, section 14(1) and schedule 1.
- 2 This section differs from section 17 of the Commonwealth Act.

Part 4 **WELS products and WELS standards**

18 **WELS products**

Note—

Section 18 of the Commonwealth Act enables the Commonwealth Minister to decide that water-use or water-saving products are WELS products and set out the WELS standard for the products.

19 **WELS standards**

Note—

Section 19 of the Commonwealth Act 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 specified supplies of the product.

20 **Meaning of WELS-labelled**

- (1) A product is ***WELS-labelled*** if it is labelled in accordance with requirements set out in the WELS standard for products of that kind.
- (2) The requirements mentioned in subsection (1) may relate to 1 or more of the following—
 - (a) the characteristics, contents, placement and quality of labels attached to products or displayed on product packaging;

- (b) documents or other material used for, or provided in connection with, the supply of the product;
- (c) advertising the product.

Note—

This section differs from section 20 of the Commonwealth Act.

Part 5

The WELS regulator

21 The regulator

Note—

Section 21 of the Commonwealth Act appoints as the regulator the Secretary of the Department of State of the Commonwealth that deals with the matters to which the Commonwealth Act relates.

22 Functions of the regulator

The regulator has the following functions—

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

- (h) to undertake or commission research in relation to the effectiveness of WELS standards for reducing water usage;
- (i) to perform other functions conferred on the regulator under an Act.

Note—

This section differs from section 22 of the Commonwealth Act.

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 performing the regulator's functions under this Act.

Note—

This section differs from section 23 of the Commonwealth Act.

24 Arrangements with other agencies

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 help the regulator to perform the regulator's functions or exercise the regulator's powers under this Act.

Note—

This section differs from section 24 of the Commonwealth Act.

25 Delegation

- (1) The regulator may, in writing, delegate 1 or more of the regulator's powers or functions under this Act to 1 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.

- (2) However, the regulator can not, under subsection (1), delegate a power or function to an officer or employee of an agency of the State without the agreement of the State.
- (3) A delegate of the regulator is, in the exercise of the delegate's delegated powers and functions, subject to the regulator's directions.

Note—

This section differs from section 25 of the Commonwealth Act.

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.

Notes—

- 1 A WELS standard may require products to be registered for the purposes of specified supplies—see section 19(2) of the Commonwealth Act. 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.

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

- 2 Section 39B provides offences in relation to false or misleading statements.
- (2) A person who is not the manufacturer of a WELS product is taken to be the manufacturer of the product for subsection (1) and section 31(3)(b) if that person would be taken to be the manufacturer of the product for sections 26(1) and 31(3)(b) of the Commonwealth Act.

Note—

This section differs from section 26 of the Commonwealth Act.

27 Documentation etc. to be provided with application for registration

- (1) An application for registration of a WELS product must be made in the manner and form decided in writing by the Commonwealth Minister under section 27(1) of the Commonwealth Act, and must be accompanied by—
 - (a) any documentation, including test results and sample labels, stated in the decision; and
 - (b) any registration fee stated in the decision.
- (2) A decision referred to in subsection (1) may also state conditions (***registration conditions***) that must be complied with for a product to remain registered.

Note—

This section differs from section 27 of the Commonwealth Act.

28 Registration of products

- (1) If—
 - (a) an application is made for registration of a WELS product; and
 - (b) the regulator does not refuse to register the product under section 29;the regulator must, by notice published in the Commonwealth of Australia Gazette, register the product.
- (2) The regulator must give the applicant written notice of the registration or refusal.
- (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), 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—

- (a) the application is not made in accordance with the applicable decision under section 27(1) of the Commonwealth Act; or
- (b) the regulator is not satisfied all of the information provided in the application is accurate; or
- (c) the product does not satisfy a minimum water efficiency or minimum general performance requirement that the product is required to satisfy by the WELS standard for products of that kind.

Notes—

- 1 See part 11 (Review of decisions).
- 2 This section differs from section 29 of the Commonwealth Act.

30 Period of registration

- (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.
- (2) If—
 - (a) a WELS product is registered under a WELS standard (the *first WELS standard*); and
 - (b) the first WELS standard is replaced;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 1 year that begins on the day on which the first WELS standard was replaced ends.

- (3) If the Commonwealth Minister, in writing, decides that, for stated purposes, the period of 1 year mentioned in section 30(2)(d) of the Commonwealth Act is extended by a further stated period, the period of 1 year mentioned in subsection (2)(d) of this section is extended for the same purposes by the same further period.

Note—

This section differs from section 30 of the Commonwealth Act.

31 Cancellling 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—
- (a) registration conditions are not complied with; or
 - (b) the regulator is satisfied information provided in the application for registration of the product—
 - (i) was not accurate at the time of the application; or
 - (ii) is no longer accurate because changes have been made to the product.
- (2) If the regulator cancels or suspends the registration of a WELS product under subsection (1), the regulator must give written notice of the cancellation or suspension to the person on whose application the product was registered.
- (3) The regulator must, by notice published in the Commonwealth of Australia Gazette, cancel the registration of a WELS product if—
- (a) the WELS standard included in the most recent decision made under section 18(1) of the Commonwealth Act 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.

Notes—

- 1 See also part 11 (Review of decisions).
- 2 This section differs from section 31 of the Commonwealth Act.

Part 7 Offences relating to the supply of WELS products

Division 1 Applicable WELS standards

32 Meaning of *applicable WELS standard*

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

Division 2 Registration and labelling

33 Registration requirements

A person commits an offence if—

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

Maximum penalty—100 penalty units.

Notes—

- 1 This section does not affect the Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact).
- 2 This section differs from section 33 of the Commonwealth Act.

34 Labelling registered products

A person commits an offence if—

- (a) the person supplies a WELS product; and
- (b) the product is registered; and

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

Maximum penalty—100 penalty units.

Notes—

- 1 This section does not affect the Criminal Code, sections 23 and 24.
- 2 This section differs from section 34 of the Commonwealth Act.

Division 3 Minimum efficiency and performance requirements

35 Minimum water efficiency—products required to be registered

A person commits an offence if—

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

Maximum penalty—100 penalty units.

Notes—

- 1 This section does not affect the Criminal Code, sections 23 and 24.
- 2 This section differs from section 35 of the Commonwealth Act.

36 Minimum general performance—products required to be registered

A person commits an offence if—

- (a) the person supplies a WELS product; and
- (b) the applicable WELS standard requires the product—

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

Maximum penalty—100 penalty units.

Notes—

- 1 This section does not affect the Criminal Code, sections 23 and 24.
- 2 This section differs from section 36 of the Commonwealth Act.

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; and
- (b) uses a WELS standard, or information included in a WELS standard, for, or in relation to, the supply of the product; and
- (c) uses the standard, or information, in a manner that is inconsistent with the standard.

Maximum penalty—100 penalty units.

Notes—

- 1 Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.
- 2 This section does not affect the Criminal Code, sections 23 and 24.
- 3 This section differs from section 37 of the Commonwealth Act.

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

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

Maximum penalty—100 penalty units.

Notes—

- 1 Section 39 sets out circumstances in which information is used for, or in relation to, the supply of a product.
- 2 This section does not affect the Criminal Code, sections 23 and 24.
- 3 This section differs from section 38 of the Commonwealth Act.

39 Using information in the supply of products

- (1) For 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; or
 - (b) the packaging in which the product is supplied; or
 - (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.

Note—

This section differs from section 39 of the Commonwealth Act.

Division 5 Extensions of criminal responsibility

39A Attempts to commit offences against Act

- (1) A person who attempts to commit an offence (the *attempted offence*) against this Act commits an offence.

Maximum penalty—the maximum penalty for the completed offence.

- (2) The Criminal Code, section 4,¹ applies to subsection (1).

Note—

This section does not appear in the Commonwealth Act but a provision to the same effect, except as to penalty, is included in section 11.1 of the *Criminal Code* (Cwlth).

39B False or misleading information or document

- (1) This section applies to a person giving information or a document—
- (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.
- (2) A person must not do either of the following—
- (a) give information, whether orally or in writing, that the person knows to be false or misleading in a material particular;
 - (b) give another person a document that the person knows to be false or misleading in a material particular without—
 - (i) telling the other person how it is false or misleading; and
 - (ii) if the person has, or can reasonably obtain, the correct information, giving the other person the correct information.

Maximum penalty—100 penalty units.

- (3) It is enough for the complaint starting the proceeding to state the document, information or statement was ‘false or misleading’ to the defendant’s knowledge, without specifying which.

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* (Cwlth).

¹ Criminal Code, section 4 (Attempts to commit offences)

Part 8 **Other enforcement**

Division 1 **Infringement notices**

40 **Infringement notices**

Notes—

- 1 Section 40 of the Commonwealth Act allows a regulation to be made allowing a person who is alleged to have committed an offence against part 7 of that Act to pay a penalty to the Commonwealth as an alternative to prosecution.
- 2 The *State Penalties Enforcement Act 1999* applies for the purposes of this Act.
- 3 Infringement notice fines may be given to a person who is alleged to have committed an offence against part 7. Infringement notice offences and the infringement notice fine for each offence are stated in the *State Penalties Enforcement Regulation 2000*.

Division 2 **Publicising offences**

41 **Regulator may publicise offences**

- (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—
 - (a) limit the regulator’s powers to publicise an offence against this Act; or
 - (b) prevent anyone else from publicising an offence against this Act; or
 - (c) affect any obligation, however imposed, on anyone to publicise an offence against this Act.
- (3) This section is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Note—

This section differs from section 41 of the Commonwealth Act.

Division 3 Enforceable undertakings

42 Acceptance of undertakings

- (1) The regulator may accept a written undertaking given by a person in connection with a matter relating to—
 - (a) complying with a WELS standard; or
 - (b) complying with a registration condition.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the regulator.

Note—

This section differs from section 42 of the Commonwealth Act.

43 Enforcement of undertakings

- (1) If the regulator considers that a person who gave an undertaking under section 42 has breached any of its terms, the regulator may apply to the Supreme Court for an order under subsection (2).
- (2) If the Supreme Court is satisfied the person has breached a term of the undertaking, the court may make 1 or more of the following orders—
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to pay 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;
 - (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 the court considers appropriate.

Note—

Section 43 of the Commonwealth Act confers a similar power to enforce undertakings on the Federal Court of Australia.

Division 4 Injunctions

44 Injunctions

- (1) If a person has engaged, is engaging or is about to engage in conduct that is or would be 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.
- (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 the person has engaged, is engaging or is about to engage in any conduct that is or would be an offence against this Act.
- (3) The court may, if it thinks it desirable, grant an interim injunction pending its decision 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.
- (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 conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.
- (7) The power to grant or vary an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do that act or thing; and
 - (b) whether or not the person has previously failed to do that act or thing and whether or not there is an imminent

danger of substantial damage to any person if the person fails to do that act or thing.

Note—

Section 44 of the Commonwealth Act 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

- (1) The regulator may, in 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.
- (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 as a WELS inspector, a WELS inspector must comply with any direction of the regulator.

Notes—

- 1 Section 46A provides offences in relation to obstructing or impersonating WELS inspectors.
- 2 This section differs from section 45 of the Commonwealth Act.

46 Identity cards

- (1) The regulator must issue an identity card to each WELS inspector.
- (2) The identity card must—

- (a) be in the form prescribed by the regulations made under the Commonwealth Act; and
 - (b) contain a recent photograph of the WELS inspector.
- (3) If a person to whom an identity card has been issued ceases to be a WELS inspector, the person must return the identity card to the regulator as soon as practicable unless the person has a reasonable excuse.

Maximum penalty—1 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) 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 the WELS inspector's identity card for inspection by the occupier; and
 - (b) the WELS inspector fails to comply with the requirement.

Note—

This section differs from section 46 of the Commonwealth Act.

46A Offences relating to WELS inspectors

- (1) A person must not, without reasonable excuse, obstruct a WELS inspector who is exercising a power under this Act.

Maximum penalty—100 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 unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) In this section—

obstruct includes hinder.

Note—

This section does not appear in the Commonwealth Act but provisions to the same effect are included in Part 7.8 of the *Criminal Code* (Cwlth).

Division 2 Powers of WELS inspectors

47 Purposes for which powers can be used

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

- (a) deciding whether a person is complying with this Act;
- (b) investigating a possible offence against this Act.

Note—

This section differs from section 47 of the Commonwealth Act.

48 Inspection powers—public areas of WELS business premises

- (1) For the purposes set out in section 47, a WELS inspector may do 1 or more of the following in a public area of WELS business premises when the premises are open to the public—
 - (a) inspect WELS products;
 - (b) 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.
- (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 mentioned in subsection (3) if the occupier of the premises consents to the entry and the exercise of the powers.
- (2) Before obtaining consent, the WELS inspector must inform the occupier that the occupier may refuse consent, or withdraw consent, at any time.

- (3) For the purposes mentioned in section 47, a WELS inspector who enters WELS premises under subsection (1) may do 1 or more of the following—
- (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;
 - (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 book, record or document on the premises;
 - (f) take onto the premises the equipment and materials the WELS inspector requires for exercising powers in relation to the premises;
 - (g) operate equipment on the premises for gaining access to a document or record relating to 1 or more WELS products.

Note—

This section differs from section 49 of the Commonwealth Act.

50 Refusing consent is not an offence

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

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

51 Inspection powers—with warrant

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

Note—

Division 3 deals with applications for warrants.

- (2) For the purposes mentioned in section 47, a WELS inspector who enters WELS premises under warrant may do 1 or more of the following—
- (a) exercise 1 or more of the powers set out in section 49(3);
 - (b) require any person on the premises to—
 - (i) answer any questions put by the WELS inspector; and
 - (ii) produce any book, record or document requested by the WELS inspector;
 - (c) seize or secure any evidential material on the premises.
- (3) A person commits an offence if—
- (a) the person is required to answer a question or produce a book, record or document under subsection (2)(b); and
 - (b) the person does not, without reasonable excuse, answer the question or produce the book, record or document.

Maximum penalty—100 penalty units.

Notes—

- 1 This section is subject to section 63 (Privilege against self-incrimination not affected).
- 2 This section differs from section 51 of the Commonwealth Act.

52 Announcement before entry under warrant

- (1) A WELS inspector must, before entering WELS premises under a warrant—
- (a) announce that the WELS inspector is authorised to enter the premises; and
 - (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 the effective execution of the warrant is not frustrated.

Note—

This section differs from section 52 of the Commonwealth Act.

53 Copy of warrant to be given to occupier

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

54 Occupier must provide inspector with facilities and assistance

A person commits an offence if—

- (a) the person is the occupier of WELS premises; and
- (b) a WELS inspector enters the premises under a warrant; and
- (c) the person does not, without reasonable excuse, provide the WELS inspector with all reasonable facilities and assistance for the effective execution of the warrant.

Maximum penalty—50 penalty units.

Note—

This section differs from section 54 of the Commonwealth Act.

55 Seizing or securing evidential material

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

- (3) The regulator may examine or test the material, even though that might result in damage or destruction of the material or a reduction in its value.
- (4) The regulator must return or release the material when the first of the following 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.

56 Holding evidential material for more than 90 days

- (1) Despite section 55(4)(b), the regulator may—
 - (a) apply to a Magistrates Court for an order allowing possession or control of evidential material for a further period stated in the order; and
 - (b) if the Magistrates Court makes the order—retain possession or control of the material.
- (2) In deciding the application, the Magistrates Court must allow the owner of the material to appear and be heard.
- (3) The Magistrates Court must not make an order allowing possession or control of the material for a further period unless it is satisfied the order is necessary for prosecuting an offence against this Act.

Note—

This section differs from section 56 of the Commonwealth Act.

57 Returning evidential material

If the regulator can not, despite making reasonable efforts, locate the owner of evidential material, the regulator may dispose of the material in the way the regulator thinks appropriate.

Note—

This section differs from section 57 of the Commonwealth Act.

Division 3 Applying for warrants to enter WELS premises

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 sworn evidence, that it is necessary to enter the WELS premises for 1 or more of the following purposes—
 - (a) deciding whether a person is complying with this Act;
 - (b) investigating a possible offence against this Act.
- (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, the further information, if any, the magistrate requires about 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 with the help and using the force that is necessary and reasonable; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (c) state the day, being not more than 1 week after the issue of the warrant, on which the warrant ends; and
 - (d) state the purpose for which the warrant is issued.

Note—

This section differs from section 58 of the Commonwealth Act.

59 Warrants by telephone, fax etc.

- (1) If, in an urgent case, a WELS inspector considers it necessary to do so, the WELS inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 58.

- (2) The magistrate may—
 - (a) require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) make a recording of the whole or any part of the communication by voice.
- (3) Before applying for the warrant, the WELS inspector must prepare an affidavit giving evidence of the kind mentioned in section 58(2) and stating the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the WELS inspector may apply for the warrant before the affidavit is sworn.
- (5) If the magistrate is satisfied—
 - (a) after having considered the terms of the affidavit; and
 - (b) after having received the further information, if any, the magistrate requires about the grounds on which the issue of the warrant is being sought—

that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the 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—
 - (i) tell the WELS inspector what the terms of the warrant are; and
 - (ii) tell the WELS inspector the day on which and the time at which the warrant was signed; and
 - (iii) tell the WELS inspector the day, being not more than 1 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; and
 - (b) the WELS inspector must—

- (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form 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—
 - (a) the form of warrant completed by the WELS inspector; and
 - (b) the affidavit mentioned in subsection (3) that has been duly sworn.
- (8) When the magistrate receives the documents mentioned in subsection (7), the magistrate must—
 - (a) attach the documents to the warrant that the magistrate completed and signed; and
 - (b) deal with the documents in the way in which the magistrate would have dealt with the affidavit if the application had been made under section 58.
- (9) A form of warrant completed under subsection (6) is authority for the same powers authorised by the warrant signed by the magistrate.
- (10) If—
 - (a) it is material, in any proceedings, for a court to be satisfied an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence—

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

Note—

This section differs from section 59 of the Commonwealth Act.

Division 4 Giving WELS information to WELS inspectors

60 Meaning of *person who has WELS information*

A person is a *person who has WELS information* if the regulator believes, on reasonable grounds, that the person 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

- (1) The regulator may, by written notice, require a person who has WELS information to give the WELS inspector stated in the notice, and in the way and within the period stated in the notice—
 - (a) the information stated in the notice; or
 - (b) any book, record or document stated in the notice.
- (2) The period mentioned in subsection (1) must end not less than 14 days after the notice is given.
- (3) A notice under subsection (1) must set out the effect of section 62A.
- (4) 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, without reasonable excuse, give the WELS inspector the information, book, record or document.

Maximum penalty—100 penalty units.

Notes—

- 1 This section is subject to section 63 (Privilege against self-incrimination not affected).
- 2 This section differs from section 61 of the Commonwealth Act.

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

- (1) The regulator may, by written notice, require a person who has WELS information to appear before the WELS inspector stated in the notice, at a time and place stated in the notice—
 - (a) to answer any questions put by the WELS inspector; and
 - (b) to produce to the WELS inspector the books, records or documents stated in the notice.
- (2) The time must not be earlier than 14 days after the notice is given.
- (3) A notice under subsection (1) must set out the effect of section 62A.
- (4) 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, without reasonable excuse, appear before the WELS inspector.

Maximum penalty—100 penalty units.

- (5) 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, without reasonable excuse—
 - (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.

Maximum penalty—100 penalty units.

Note—

This section differs from section 62 of the Commonwealth Act.

62A False or misleading information or documents

- (1) A person is guilty of an offence if—

- (a) the person gives information to a WELS inspector under section 61(1) or 62; and
- (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.

Maximum penalty—100 penalty units.

- (2) A person is guilty of an offence if—
 - (a) the person produces a book, record or document to a WELS inspector under section 61(1) or 62; and
 - (b) the person does so knowing that the document is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (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—
 - (a) stating that the book, record or document is, to the knowledge of the 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 person, false or misleading.
- (4) It is enough for the complaint starting the proceeding to state the document, information or statement was ‘false or misleading’ to the defendant’s knowledge, without specifying which.

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* (Cwlth).

Division 5 Privilege against self-incrimination

63 Privilege against self-incrimination not affected

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.

Note—

This section differs from section 63 of the Commonwealth Act.

Part 10 Money

Division 1 The WELS account

64 WELS account

Note—

Section 64 of the Commonwealth Act establishes the WELS account.

65 Credits to the WELS account

- (1) The following amounts must be paid to the Commonwealth for crediting to the WELS account—
 - (a) amounts equal to amounts received by the State from fines, infringement notice fines within the meaning of the *State Penalties Enforcement Act 1999* or under a court order under section 43(2) in relation to the breach of an undertaking;
 - (b) amounts equal to amounts from time to time received by the State under division 2.

- (2) The consolidated fund is appropriated to the extent necessary to enable payment of amounts to the Commonwealth under subsection (1).

Note—

This section differs from section 65 of the Commonwealth Act.

66 Purpose of the WELS account

The purpose of the WELS account is to make payments—

- (a) to further the objects of this Act, as stated 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.

Note—

This section differs from section 66 of the Commonwealth Act.

Division 2 Charging fees etc.

67 Regulator may charge for services

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

Note—

This section differs from section 67 of the Commonwealth Act.

68 Recovery of amounts

The following amounts may be recovered as debts due to the State—

- (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.

Note—

This section differs from section 68 of the Commonwealth Act.

Part 11 Review of decisions

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

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

Note—

This section differs from section 69 of the Commonwealth Act.

70 **Notification of decisions and review rights**

- (1) The regulator must, as soon as practicable after making a reviewable decision, cause a written notice to be given to the affected person for the decision, containing the following—
 - (a) the terms of the decision;
 - (b) the reasons for the decision;
 - (c) a statement setting out particulars of the person's review rights.

- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

Note—

This section differs from section 70 of the Commonwealth Act.

71 Internal review

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

Note—

This section differs from section 71 of the Commonwealth Act.

72 Review of decisions by Administrative Appeals Tribunal

- (1) Subject to the Administrative Appeals Tribunal Act, an affected person may apply under that Act for a review of the following decisions—
- (a) a reviewable decision made by the regulator personally;
 - (b) an internal review decision made by the regulator under section 71.

(2) In this section—

decision see the Administrative Appeals Tribunal Act, section 3(3).²

Note—

This section differs from section 72 of the Commonwealth Act.

Part 12 Miscellaneous

73 Compensation for damage to electronic equipment

- (1) This section applies if, as a result of electronic equipment being operated under section 49—
- (a) damage is caused to the equipment; or
 - (b) the data recorded on the equipment is damaged; or
 - (c) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted and the damage or corruption occurs because—
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.

2 Administrative Appeals Tribunal Act, section 3 (Interpretation)—

- (3) Unless the contrary intention appears, a reference in this Act to a decision includes a reference to—
- (a) making, suspending, revoking or refusing to make an order or determination;
 - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
 - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
 - (d) imposing a condition or restriction;
 - (e) making a declaration, demand or requirement;
 - (f) retaining, or refusing to deliver up, an article;
 - (g) doing or refusing to do any other act or thing.

- (2) The regulator must pay the owner of the equipment, or the user of the data or programs, the reasonable compensation for the damage or corruption the owner or user agree on.
- (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 the reasonable amount of compensation the court decides.
- (4) In deciding the amount of compensation payable, regard must be had to whether the occupier of the premises and the occupier's employees and agents, if they were available at the time, had provided any appropriate warning or guidance on the operation of the equipment.

Note—

This section differs from section 73 of the Commonwealth Act.

74 Compensation for acquisition of property

Note—

Section 74 of the Commonwealth Act provides for payment of compensation by the Commonwealth for acquisition of property.

75 Annual report

- (1) The regulator must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the operations of the regulator under this Act during that year.
- (2) The Minister must cause a copy of the report to be laid before the Legislative Assembly within 14 sitting days after the Minister receives the report.

Notes—

- 1 Section 75(2)(a) of the Commonwealth Act refers to 15 sitting days.
- 2 Section 75(2)(b) of the Commonwealth Act requires the regulator to give a copy of the regulator's report under that section to each State.

76 Review of operation of WELS scheme

The Minister must cause a copy of the report of the independent review of the WELS scheme given to the State under section 76 of the Commonwealth Act to be laid before the Legislative Assembly within 14 sitting days after the Minister receives the report.

Note—

This section differs from section 76 of the Commonwealth Act. That section 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.

77 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may—
 - (a) prescribe fees payable under this Act; and
 - (b) impose a penalty of not more than 20 penalty units for contravention of a regulation.

Note—

This section differs from section 77 of the Commonwealth Act.

Schedule Dictionary

section 7

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

affected person see section 69(2).

agency—

- (a) of the Commonwealth, includes the following—
 - (i) an agency within the meaning of the *Financial Management and Accountability Act 1997* (Cwlth);
 - (ii) a body corporate established for a public purpose under a Commonwealth Act; and
- (b) of this or another State, includes the following—
 - (i) a Department of State, however described, of the State;
 - (ii) a body corporate established for a public purpose under a law of the State.

applicable WELS standard see section 32.

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

Commonwealth Minister means the Commonwealth Minister under the Commonwealth Act.

corresponding law see section 12.

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

decision includes determination.

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

give includes produce.

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

Schedule 1 (continued)

person who has WELS information see section 60.

registered means registered under a WELS standard.

registration conditions see section 27(2).

regulator means the WELS Regulator established under section 21 of the Commonwealth Act.

reviewable decision see section 69(1).

stated includes specified.

supply means—

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

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

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

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

WELS account means the WELS Account established under section 64 of the Commonwealth Act.

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

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

WELS-labelled see section 20(1).

WELS premises means premises used for, or in connection with, the supply of 1 or more WELS products.

WELS product means a WELS product within the meaning of the Commonwealth Act.

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

Schedule 1 (continued)

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