

NORTHERN TERRITORY OF AUSTRALIA
WATER EFFICIENCY LABELLING AND STANDARDS ACT 2006

Act No. 30 of 2006

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 30 of 2006

AN ACT

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

[Assented to 19 September 2006]

[Second reading 15 June 2006]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY MATTERS

1. Short title

This Act may be cited as the *Water Efficiency Labelling and Standards Act 2006*.

Note

This section differs from section 1 of the Commonwealth Act.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

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 Crown

(1) This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.

Note

This section differs from section 4 of the Commonwealth Act.

5. External Territories

Note

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

5A. Numbering and notes

(1) To ensure consistent numbering between this Act and the Commonwealth Act:

- (a) if a section of the Commonwealth Act is not required in this Act:
 - (i) the section number is included in this Act despite the omission of the body of the section; and
 - (ii) a note about the section is included under the section heading; and
- (b) if this Act contains a section not included in the Commonwealth Act:
 - (i) the section is numbered so as to maintain consistency in numbering between sections common to both Acts; and

- (ii) a note about the non-appearance of the section in the Commonwealth Act is included at the end of the section.

(2) In addition, a note is included at the end of a section if the section differs substantially from an equivalent section in the Commonwealth Act.

(3) To avoid doubt, a section does not differ substantially from an equivalent section in the Commonwealth Act only for stylistic, formatting or minor drafting differences.

Note

This section does not appear in the Commonwealth Act.

PART 2 – INTERPRETATION

6. Application of Criminal Code

Chapter 2 of the *Criminal Code Act 1995* (Cth) as in force from time to time (the "Criminal Code") applies in relation to an offence against this Act as if it were a law of the Territory.

Note

Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

7. Definitions

In this Act:

"Administrative Appeals Tribunal" means the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975* (Cth);

"affected person", see section 69(2);

"agency" includes:

- (a) in relation to the Commonwealth:
 - (i) an Agency within the meaning of the *Financial Management and Accountability Act 1997* (Cth); and
 - (ii) a body corporate established for a public purpose by or under a law of the Commonwealth; and
- (b) in relation to the Territory:
 - (i) an Agency; and
 - (ii) a body corporate established for a public purpose by or under a law of the Territory; and

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- (c) in relation to a State or another Territory:
 - (i) a Department of State (however described) of the State or Territory; and
 - (ii) a body corporate established for a public purpose by or under a law of the State or Territory;

"applicable WELS standard", see section 32;

"Commonwealth Act" means the *Water Efficiency Labelling and Standards Act 2005* (Cth);

"Commonwealth Minister", see section 7(1) of the Commonwealth Act;

"corresponding law", see section 12;

"corresponding State-Territory law", see section 12(1) of the Commonwealth Act;

"Criminal Code", see section 6;

"damage", in relation to data, includes damage by erasure or addition of data;

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

"occupier", of premises, includes a person who apparently represents the occupier of the premises;

"person who has WELS information" includes a person mentioned in section 60;

"registered" means registered under a WELS standard;

"registration conditions", see section 31(1)(a);

"regulation" means a regulation made under this Act;

"Regulator" means the Regulator established by section 21 of the Commonwealth Act;

"reviewable decision", see section 69(1);

"strict liability", see section 6.1 of the Criminal Code;

"supply" means:

- (a) supply for consideration; or

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(b) offer to supply for consideration;

"warrant", for entering WELS premises, means a warrant issued under Part 9, Division 3;

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

(a) is not a water-use product; and

(b) is designed to operate in place of a water-use product;

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

"WELS Account", see section 7(1) 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 one or more WELS products;

"WELS product", see section 18(1) of the Commonwealth Act;

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

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

Note

This section differs from section 7 of the Commonwealth Act.

PART 3 – NATIONAL WELS SCHEME

8. WELS scheme to be national cooperative scheme

The Legislative Assembly intends that this Act form a part of a cooperative scheme between the Commonwealth and the States and Territories for national water efficiency labelling and standards.

Note

This section differs from section 8 of the Commonwealth Act.

9. Application of Act

Note

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

10. Relationship to other Territory laws

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

Note

This section differs from section 10 of the Commonwealth Act.

11. State and Territory laws may operate concurrently

Note

The Commonwealth Act includes a provision allowing State and Territory laws to operate concurrently with that Act.

12. Corresponding law

A corresponding law is:

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

Note

This section differs from section 12 of the Commonwealth Act.

13. Commonwealth consent to conferral of functions on Regulator

Note

Section 13 of the Commonwealth Act 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

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 corresponding State-Territory law imposes duty

Note

Section 15 of the Commonwealth Act provides a definition of the phrase "imposes a duty" for sections 13 and 14 of that Act.

16. No doubling-up of liabilities

(1) A person is not liable for an offence under this Act (the "Territory offence") if:

- (a) the person has been punished for an offence under the Commonwealth Act; and
- (b) the act (including omission) constituting the offence under the Commonwealth Act also constitutes the Territory offence.

(2) If a person has paid, or been ordered to pay, a pecuniary penalty under the Commonwealth Act for an act (including omission), the person is not liable to a pecuniary penalty under this Act for the same act.

Note

This section differs from section 16 of the Commonwealth Act.

17. Review of decisions

(1) Application may be made to the Administrative Appeals Tribunal for review of a reviewable decision if the decision is declared by the regulations made under the Commonwealth Act to be a reviewable State-Territory decision for section 17 of that Act.

(2) The AAT legislation applies as laws of the Territory for subsection (1).

(3) For this section, a reference in the applied AAT legislation to a provision of Part IVA of the *Administrative Appeals Tribunal Act 1975* (Cth) is taken to be a reference to that provision as it has effect as a law of the Commonwealth.

(4) In this section:

"AAT legislation" means the following legislation as in force from time to time:

- (a) the *Administrative Appeals Tribunal Act 1975* (Cth), other than Part IVA of the Act;
- (b) regulations made under the Act (other than Part IVA of the Act).

Note

This section differs from section 17 of the Commonwealth Act.

PART 4 – WELS PRODUCTS, STANDARDS AND LABELLING

18. WELS products

Note

Section 18 of the Commonwealth Act enables the Commonwealth Minister to determine that water-use or water-saving products of a specified kind are WELS products and sets out the WELS standard for the products.

19. WELS standards

Note

Section 19 of the Commonwealth Act states what must be set out in the WELS standards and enables the WELS standards to require products to be registered and WELS-labelled for specified supplies of the product.

20. WELS-labelled

(1) A product is WELS-labelled if it is labelled as required by the applicable WELS standard for the product.

- (2) The requirements may relate to one 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.

PART 5 – WELS REGULATOR

21. Regulator

Note

Section 21 of the Commonwealth Act appoints the Commonwealth Secretary (within the meaning of that Act) to be the Regulator.

22. Functions of Regulator

The Regulator has the following functions:

- (a) to administer the WELS scheme;
- (b) to undertake or commission research for water-use and water-saving products;
- (c) to provide advice for determining what water-use or water-saving products are WELS products;

- (d) to undertake or commission research for WELS standards;
- (e) to assist in the development of WELS standards;
- (f) to provide information and advice to the Minister about the operation of WELS standards;
- (g) to provide information and advice to the following about the operation of the WELS scheme:
 - (i) the Minister;
 - (ii) the Chief Executive Officer of the Agency administering this Act;
 - (iii) the public;
- (h) to undertake or commission research for the effectiveness of WELS standards for reducing water usage;
- (i) other functions as are conferred on the Regulator by this Act or another law.

Note

This section differs from section 22 of the Commonwealth Act.

23. Powers of Regulator

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

24. Arrangements with Agencies

The Regulator may arrange with an Agency for the services of a public sector employee employed at the Agency to be made available to assist the Regulator in exercising the powers, or performing the functions, of the Regulator.

Note

This section differs from section 24 of the Commonwealth Act.

25. Delegation

(1) The Regulator may, by writing, delegate any of the Regulator's powers or functions under this Act to one or more of the following:

- (a) a public sector employee;
- (b) an officer or employee of an agency of the Commonwealth;
- (c) an officer or employee of an agency of a State or another Territory.

(2) However, the Regulator must not delegate the power or function to a public sector employee without the agreement of the Territory.

(3) A delegate of the Regulator is subject to the Regulator's directions in exercising the delegated powers and performing the delegated functions.

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 the registration of the product.

Notes for subsection (1)

1. A WELS standard may require products to be registered for 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 supply: see section 33.

WELS products can be registered even if registration is not required. However, once it is registered, 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 39A provides offences relating to false or misleading statements.

(2) A reference to the manufacturer of the product in this Act includes a reference to a person who would be taken to be the manufacturer of the product under section 26 of the Commonwealth Act.

Note

This section differs from section 26 of the Commonwealth Act.

27. Documentation for application

An application for the registration of a WELS product must be:

- (a) made in accordance with the determination made under section 27(1) of the Commonwealth Act; and
- (b) accompanied by:
 - (i) the documentation (including test results and sample labels) specified in the determination; and
 - (ii) any registration fee specified in the determination.

Note

This section differs from section 27 of the Commonwealth Act.

28. Registration

(1) This section applies if an application is made for the registration of a WELS product.

(2) The Regulator must, by notice published in the *Commonwealth of Australia Gazette*, register the product if the Regulator does not refuse the application.

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

(4) The Regulator is taken to have refused the application if, at the end of 3 months beginning on the day the application is made:

- (a) a notice registering the product has not been published under subsection (2); and
- (b) the applicant has not been notified of the refusal under subsection (3).

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 section 27; 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 as provided by the applicable WELS standard for the product.

30. Period of registration

(1) A registered WELS product remains registered until the first of the following happens:

- (a) the registration is cancelled or suspended under section 31;
 - (b) the end of 5 years beginning on the day the product is registered.
- (2) Subsection (1) does not apply if:
- (a) the product is registered under a WELS standard (the "first WELS standard"); and
 - (b) the first WELS standard is replaced.

(3) If subsection (2) applies, the product remains registered under the first WELS standard until the first of the following happens:

- (a) the product is registered under another WELS standard;
- (b) the end of one year beginning on the day the first WELS standard was replaced.

(4) If the Commonwealth Minister extends a period by a further period under section 30(3) of the Commonwealth Act for specified purposes, the period of one year in subsection (3)(b) 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. 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:

- (a) the conditions of registration specified by the Commonwealth Minister under section 27(2) of the Commonwealth Act (the "registration conditions") are not complied with; or
- (b) the Regulator considers information provided in the application for the registration:
 - (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, the Regulator must give written notice of the cancellation or suspension to the applicant for the registration.

(3) The Regulator must, by notice published in the *Commonwealth of Australia Gazette*, cancel the registration of a WELS product if:

- (a) the applicable WELS standard for the product does not require it to be registered; and
- (b) the applicant for the registration requests the Regulator in writing for the cancellation.

PART 7 – OFFENCES RELATING TO SUPPLY OF WELS PRODUCTS

Division 1 – Preliminary matters

32. Applicable WELS standard

The applicable WELS standard for a WELS product is:

- (a) if the product is registered – the WELS standard under which it is registered; or
- (b) otherwise – the WELS standard included in the most recent determination made under section 18(1) of the Commonwealth Act that relates to products of the same kind as the product.

Division 2 – Registration and labelling

33. Registration requirement

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

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

34. Labelling registered products

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

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Division 3 – Minimum requirements for products required to be registered

35. Minimum water efficiency

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

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

36. Minimum general performance

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

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Division 4 – Misuse of WELS standards

37. Misuse of WELS standards and information

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

- (b) uses a WELS standard, or information included in a WELS standard for the supply of the product, in a way that is inconsistent with the standard.

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note

Section 39 sets out circumstances in which information is used for the supply of a product.

38. Information inconsistent with WELS standards

- (1) A person commits an offence if:
 - (a) the person uses information for the supply of a WELS product; and
 - (b) the information is inconsistent with the information contained in the applicable WELS standard for the product.

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note

Section 39 sets out circumstances in which information is used for the supply of a product.

39. Using information for supply of products

(1) For sections 37 and 38, information is used for 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) a document or other material used for, or provided in connection with, the supply of the product; or
- (d) any advertising relating to the product.

- (2) Subsection (1) does not limit sections 37 and 38.

Division 5 – Extensions of criminal responsibility

39A. False or misleading information or document

- (1) A person must not engage in an act specified in subsection (2):
 - (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).

Maximum penalty: 60 penalty units or imprisonment for 12 months.

- (2) For subsection (1), the following acts are specified:
 - (a) giving information (whether orally or in writing) that the person knows to be false or misleading in a material particular;
 - (b) producing a document that the person knows to be false or misleading in a material particular.
- (3) Subsection (2)(b) does not apply if the document is accompanied by a written statement signed by the person:
 - (a) stating the document is, to the knowledge of the person, false or misleading in a material particular; and
 - (b) stating that material particular.

(4) In subsection (3), a reference to a person that is a body corporate includes a reference to an officer of the body corporate who is authorised or permitted to sign a statement mentioned in the subsection.

Note

This section does not appear in the Commonwealth Act but provisions to a similar effect are included in Part 7.4 of the Criminal Code.

PART 8 – OTHER ENFORCEMENT MATTERS

Division 1 – Infringement notices

40. Infringement notices

The regulations may provide for:

- (a) the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act; and

- (b) the service of a notice relating to payment of the amount on a person alleged to have committed the offence; and
- (c) the particulars to be included in the notice.

Note

This section differs from section 40 of the Commonwealth Act.

Division 2 – Publicising offences

41. Regulator may publicise offences

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

Division 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, with the Regulator's consent, withdraw or vary the undertaking.

43. Enforcement of undertakings

- (1) If the Regulator considers a person has breached a term of an undertaking given by the person under section 42, 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 that term, the Court may make one or more of the following orders:
 - (a) an order directing the person to comply with that term;

- (b) an order directing the person to pay to the Territory an amount up to the amount of any financial benefit obtained by the person because of the breach (whether directly or indirectly);
- (c) an order the Court considers appropriate directing the person to compensate another person who has suffered loss or damage because of the breach;
- (d) another order the Court considers appropriate.

Note

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

Division 4 – Injunctions

44. Injunctions

(1) If the Regulator considers a person has engaged, is engaging or is proposing to engage in conduct constituting an offence against this Act, the Regulator may apply to the Supreme Court for an injunction:

- (a) restraining the person from engaging in the conduct; or
 - (b) requiring the person to do an act or thing.
- (2) The Court may:
- (a) grant the injunction if satisfied the person has engaged, is engaging or is proposing to engage in the conduct; or
 - (b) grant the injunction whether or not so satisfied if:
 - (i) all parties in the proceedings consent to the granting of the injunction; and
 - (ii) the Court considers it appropriate to grant the injunction in the circumstances.

(3) The Court may grant an interim injunction pending its determination of the application if it thinks it appropriate to grant the interim injunction in the circumstances.

(4) The Court must not require the Regulator or anyone else, as a condition of granting the 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 the conduct may be exercised:

- (a) whether or not the Court considers the person intends to engage again, or to continue to engage, in such conduct; and
- (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:

- (a) whether or not the Court considers the person intends to refuse or fail again, or to continue to refuse or fail, to do the act or thing; and
- (b) whether or not the person has previously refused or failed to do the act or thing; and
- (c) whether or not there is an imminent danger of substantial damage to anyone if the person refuses or fails to do the act or thing.

Note

Section 44 of the Commonwealth Act confers on the Federal Court of Australia a similar power to grant injunctions.

PART 9 – WELS INSPECTORS

Division 1 – Appointment of WELS inspectors

45. Regulator may appoint WELS inspectors

(1) The Regulator may, by writing, appoint any of the following as a WELS inspector:

- (a) a public sector employee;
- (b) an officer or employee of an agency of the Commonwealth.

(2) The Regulator must not appoint a public sector employee as a WELS inspector without the agreement of the Territory.

(3) A WELS inspector must comply with the Regulator's direction in exercising powers or performing functions as a WELS inspector.

Notes

1. *Section 46A creates offences in relation to hindering, 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) A person commits an offence if the person:
 - (a) has been issued with an identity card; and
 - (b) ceases to be a WELS inspector; and
 - (c) does not return the card to the Regulator as soon as practicable after the cessation.

Maximum penalty: 1 penalty unit.

(4) A WELS inspector must carry the inspector's identity card when exercising powers or performing functions as a WELS inspector.

(5) A WELS inspector must not exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises has requested the inspector to produce the inspector's identity card for inspection by the occupier; and
- (b) the inspector fails to do so.

Note

This section differs from section 46 of the Commonwealth Act.

46A. Offences in relation to WELS inspectors

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

Maximum penalty: 100 penalty units or imprisonment for 6 months.

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

Maximum penalty: 400 penalty units or imprisonment for 2 years.

Note

This section does not appear in the Commonwealth Act but provisions to a similar effect are included in Part 7.8 of the Criminal Code.

Division 2 – Powers of WELS inspectors

47. Purposes for powers

A WELS inspector may exercise the powers under 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

(1) For the purposes mentioned 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:

- (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 inspector must inform the occupier that the occupier may refuse consent, or withdraw consent, at any time.

(3) A WELS inspector may exercise one or more of the following powers for the purposes mentioned in section 47:

- (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 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;
- (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 not an offence

The occupier does not commit an offence for refusing to allow the inspector to enter, or remain on, the premises if the inspector does not have a warrant to enter the premises.

51. Inspection powers – with warrant

(1) If a WELS inspector has a warrant to enter WELS premises, the inspector may:

- (a) enter the premises; and
- (b) for the purposes mentioned in section 47:
 - (i) exercise any of the powers mentioned in section 49(3); and
 - (ii) require anyone on the premises to answer a question or produce a book, record or document; and
 - (iii) seize or secure any evidential material on the premises.

- (2) A person commits an offence if:
 - (a) the person is required to answer a question or produce a book, record or document under subsection (1)(b)(ii); and
 - (b) the person fails to comply with the requirement.

Maximum penalty: 60 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

Notes

1. *This section differs from section 51 of the Commonwealth Act.*
2. *Division 3 provides for the application of a warrant to enter WELS premises.*

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
- (b) give anyone on the premises an opportunity to allow the entry.

(2) Subsection (1) does not apply if the inspector believes on reasonable grounds that immediate entry to the premises is necessary for ensuring the effective execution of the warrant.

53. Giving copy of warrant to occupier

(1) If 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 does not need to include the signature of the magistrate who issued the warrant.

54. Occupier must assist inspector

- (1) A person commits an offence if:
 - (a) the person is the occupier of WELS premises; and
 - (b) a WELS inspector enters the premises under a warrant; and

- (c) the person does not provide the inspector with reasonable facilities and assistance for the effective execution of the warrant.

Maximum penalty: 30 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

55. Seizing or securing evidential material

(1) This section applies if a WELS inspector seizes or secures evidential material on WELS premises.

(2) The WELS inspector must give the occupier of the premises a receipt for the material.

(3) The Regulator may:

- (a) make copies of the material; and
- (b) examine or test the material (whether or not it 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 end of 90 days beginning on the day the material was seized or secured.

56. Holding evidential material for more than 90 days

(1) Despite section 55(4)(b), the Regulator may:

- (a) apply to the Local Court for an order allowing possession or control of evidential material for a further period specified in the order; and
- (b) retain possession or control of the material in accordance with the order if the order is made.

(2) The Court must allow the owner of the material to appear and be heard in determining the application.

(3) The Court must not make the order unless satisfied the order is necessary for prosecuting an offence against this Act.

57. Returning evidential material

The Regulator may dispose of evidential material as the Regulator thinks appropriate if the Regulator cannot, despite making reasonable efforts, locate the owner of the material.

Division 3 – Warrants for entering WELS premises

58. Ordinary warrants

(1) A WELS inspector may apply to a magistrate for a warrant to enter particular WELS premises.

(2) The magistrate may issue the warrant if satisfied, by evidence on oath, it is necessary to enter the 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.

(3) However, the magistrate must not issue the warrant unless the inspector or someone else has given the magistrate such further information (by affidavit or orally) as required by the magistrate about the grounds for seeking the warrant.

(4) The warrant must:

- (a) authorise the inspector to enter the premises with such assistance or force as is necessary and reasonable; and
- (b) state whether the entry may be made at any time or during specified time; and
- (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and
- (d) state the purposes for which the warrant is issued.

Note

This section differs from section 58 of the Commonwealth Act.

59. Warrants by telephone, fax and other electronic means

(1) A WELS inspector may, in an urgent case, apply to a magistrate by telephone, fax or other electronic means for a warrant under section 58.

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- (2) For the application, the magistrate may:
 - (a) require communication by voice to the extent to which it is practicable in the circumstances; and
 - (b) make a recording of all or part of that communication.

(3) Before applying for the warrant, the inspector must prepare an affidavit for the evidence mentioned in section 58(2) that sets out the grounds for seeking the warrant.

(4) The inspector may apply for the warrant before the affidavit is sworn or affirmed.

(5) The magistrate may complete and sign the same warrant that the magistrate would issue under section 58 had the application been made under that section if the magistrate is satisfied there are reasonable grounds for seeking the warrant, after:

- (a) considering the terms of the affidavit; and
 - (b) receiving any further information required by the magistrate about those grounds.
- (6) If the magistrate completes and signs the warrant:
- (a) the magistrate must:
 - (i) inform the inspector of the terms of the warrant; and
 - (ii) inform the inspector of the time when the warrant was signed; and
 - (iii) inform the inspector of 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 purposes for which the warrant is issued; and
 - (b) the 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 time when the warrant was signed.

(7) The inspector must, 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 inspector under subsection (6)(b); and
- (b) the affidavit mentioned in subsection (3) that has been duly sworn or affirmed.

(8) When the magistrate receives the documents, the magistrate must:

- (a) attach them to the warrant completed and signed by the magistrate; and
- (b) deal with them in the same way the magistrate would have dealt with them if the application had been made under section 58.

(9) A form of warrant duly completed under subsection (6)(b) is authority for the same powers as are authorised by the warrant signed by the magistrate.

(10) A court must assume, unless the contrary is proved, the exercise of a power was not authorised by a warrant under this section if the warrant is not produced in evidence in proceedings before the court.

Note

This section differs from section 59 of the Commonwealth Act.

Division 4 – Giving information to WELS inspectors

60. Person having WELS information

A person is taken to have WELS information if the Regulator believes on reasonable grounds the person is capable of giving information, or producing books, records or documents, relevant to:

- (a) investigating an offence against this Act; or
- (b) preventing an offence against this Act.

61. Regulator may require person to give information

(1) The Regulator may, by written notice, require a person who has WELS information to give specified information, or produce specified books, records or documents, to a specified WELS inspector in a specified manner and within a specified period.

(2) The period specified must end not less than 14 days after the notice is given.

(3) The notice must set out the effect of section 62A.

(4) The person commits an offence if the person fails to comply with the notice.

Maximum penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

Note

This section differs from section 61 of the Commonwealth Act.

62. Regulator may require person to appear before WELS inspector

(1) The Regulator may, by written notice, require a person who has WELS information to appear before a specified WELS inspector at a specified time and at a specified place:

(a) to answer questions put by the inspector; and

(b) to produce to the inspector specified books, records or documents.

(2) The time specified must not be earlier than 14 days after the notice is given.

(3) The notice must set out the effect of section 62A.

(4) The person commits an offence if the person fails to comply with the notice.

Maximum penalty: 60 penalty units.

(5) An offence against subsection (4) is an offence of strict liability.

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 the person:

(a) gives information to a WELS inspector under section 61 or 62 or purportedly under that section; and

(b) does so knowing the information:

(i) is false or misleading in a material particular; or

- (ii) omits a matter or thing without which the information is misleading in a material particular.

Maximum penalty: Imprisonment for 6 months or 100 penalty units.

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

Maximum penalty: Imprisonment for 6 months or 100 penalty units.

(3) Subsection (2) does not apply if the book, record or document is accompanied by a written statement signed by the person:

- (a) stating the book, record or document is, to the knowledge of the person, false or misleading in a material particular; and
- (b) stating that material particular.

(4) In subsection (3), a reference to a person that is a body corporate includes a reference to an officer of the body corporate who is authorised or permitted to sign a statement mentioned in the subsection.

Note

This section does not appear in the Commonwealth Act but provisions to a similar effect are included in Part 7.4 of the Criminal Code.

Division 5 – Privilege against self-incrimination

63. Privilege against self-incrimination not affected

This Part does not affect the right of a person to refuse to answer a question, give information, or produce a book, record or document on the ground that it might:

- (a) incriminate the person; or
- (b) make the person liable to a penalty.

PART 10 – MONEY

Division 1 – WELS Account

64. Establishment of Account

Note

Section 64 of the Commonwealth Act establishes the WELS Account.

65. Credits to Account

Amounts equal to the following must be paid to the Commonwealth for crediting to the WELS Account:

- (a) money received by the Territory for fines, infringement penalties or undertakings given under section 42;
- (b) money received by the Territory under Division 2.

Note

This section differs from section 65 of the Commonwealth Act.

66. Purpose of Account

The purpose of the WELS Account is to make payments:

- (a) to further the objects of this Act and of a 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 – Fees

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 are debts due to the Territory:

- (a) fees payable to the Territory under this Act or a corresponding law;

- (b) amounts payable to the Territory in connection with the 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. 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 applicant for the registration of the WELS product is the affected person for the reviewable decision.

70. Notification of decisions and review rights

- (1) The Regulator must, as soon as practicable after making a reviewable decision, give written notice to the affected person about the decision.
- (2) The notice must contain the following:
 - (a) the terms of the decision;
 - (b) the reasons for the decision;
 - (c) a statement specifying particulars of the person's review rights.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of the decision.

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 a review of the decision.
- (2) The application must be made within:
 - (a) 30 days after the day on which the decision first came to the notice of the applicant; or
 - (b) a further period as the Regulator, either before or after the end of the 30-day period, allows.

(3) The Regulator must, on receiving the application, review the reviewable 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 such other decision as the Regulator thinks appropriate.

72. Review by Administrative Appeals Tribunal

(1) Subject to section 17 and the *Administrative Appeals Tribunal Act 1975* (Cth) as applied by that section, an application may be made to the Administrative Appeals Tribunal for a review of the following decisions:

(a) a reviewable decision made by the Regulator personally;

(b) a decision made by the Regulator on a review under section 71.

(2) The application may be made only by the affected person concerned.

Note

This section differs from section 72 of the Commonwealth Act.

PART 12 – MISCELLANEOUS MATTERS

73. Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 49:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption 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) 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 agreed on with the owner or user.

(3) If no agreement is reached on the amount of the compensation, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable compensation as the court decides.

(4) In making the decision, the court must have regard to whether any appropriate warning or guidance on the operation of the equipment had been provided by:

- (a) the occupier of the premises; or
- (b) an employee or agent of the occupier.

Note

This section differs from section 73 of the Commonwealth Act.

74. Acquisition on just terms

If, but for this section, property is acquired under this Act other than on just terms:

- (a) the person from whom the property is acquired is entitled to receive the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may determine the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

Note

This section differs from section 74 of the Commonwealth Act.

75. Annual report

(1) This section applies to a copy of an annual report of the Regulator given to the Territory under section 75(2) of the Commonwealth Act.

(2) The Minister must table a copy of that report in the Legislative Assembly within 6 sitting days after the Minister receives it.

Note

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

76. Review of WELS scheme

(1) This section applies to a copy of a report of an independent review of the WELS scheme given to the Territory under section 76(3) of the Commonwealth Act.

(2) The Minister must table a copy of that report in the Legislative Assembly within 6 sitting days after the Minister receives it.

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 of the report of the review to each participating State and Territory.

77. Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may:
 - (a) prescribe fees and make any other provisions about the fees; and
 - (b) for an offence against the regulations, prescribe a fine not exceeding 50 penalty units; and
 - (c) provide for an offence against this Act to be a regulatory offence; and
 - (d) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulations; and
 - (e) apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

Note

This section differs from section 77 of the Commonwealth Act.
