



Water Efficiency Labelling and Standards Regulations 2005¹

Select Legislative Instrument 2005 No. 96

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Water Efficiency Labelling and Standards Act 2005*.

Dated 25 May 2005

P. M. JEFFERY
Governor-General

By His Excellency's Command

IAN CAMPBELL
Minister for the Environment and Heritage

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Part 1 **Preliminary**

Note The numbers of the Parts in these Regulations correspond to those in the Act.

1 **Name of Regulations**

These Regulations are the *Water Efficiency Labelling and Standards Regulations 2005*.

2 **Commencement**

These Regulations commence on the day after they are registered.

Regulation 3

Part 3 National WELS scheme**3 Definition**

In these Regulations:

Act means the *Water Efficiency Labelling and Standards Act 2005*.

4 Decisions to be reviewable (Act s 17)

Any decision made by the Regulator in the performance of a function or the exercise of a power conferred by a corresponding State-Territory law is a reviewable State-Territory decision for the purposes of section 17 of the Act if the law under which the decision is made provides for review by the Administrative Appeals Tribunal.

Note A decision by the Regulator, to be a reviewable State-Territory decision, must be made under a law which provides for review by the Administrative Appeals Tribunal: see subsection 17 (2) of the Act.

Part 6 Applying for registration

5 Person taken to be manufacturer (Act s 26)

- (1) For subsection 26 (2) of the Act, this regulation sets out the circumstances in which a person who is not the manufacturer of a WELS product may be taken to be the manufacturer for the purposes of subsection 26 (1) and paragraph 31 (3) (b) of the Act.
- (2) The person must have applied to the Regulator, in a form approved by the Regulator, and included the following:
 - (a) a description of the product;
 - (b) the name and address of the applicant;
 - (c) if the applicant is the importer of the product — a statement to that effect;
 - (d) if the applicant is not the importer of the product — a statement explaining the applicant's connection with the product;
 - (e) the name and address of the manufacturer of the product;
 - (f) an acknowledgment, signed by the manufacturer, that the applicant will apply for registration of the product.
- (3) The Regulator must have approved the application.
- (4) The Regulator must approve such an application if he or she is satisfied that:
 - (a) the applicant is the importer of the product; or
 - (b) the product is made in Australia and:
 - (i) the applicant has an appropriate connection with the product; and
 - (ii) approving the application would allow the proper administration of the Act in relation to the product.

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Part 8 Infringement notices**6 Purpose of Part 8 (Act s 40)**

For subsection 40 (1) of the Act, this Part provides a procedure under which a person who is alleged to have committed an offence against Part 7 of the Act may, as an alternative to prosecution, dispose of the matter by payment of a monetary penalty (an *infringement notice penalty*) specified in a notice (an *infringement notice*) served on the person.

7 Infringement notice

- (1) A WELS inspector may serve an infringement notice on any person if he or she has reasonable grounds to believe that the person has committed an offence against Division 2, 3 or 4 of Part 7 of the Act.

Note 1 For how a document is served on a person: see section 28A of the *Acts Interpretation Act 1901*.

Note 2 The Regulator's powers or functions may be exercised by a delegate who is an officer or employee of the Commonwealth, a State or a Territory: see section 25 of the Act.

- (2) The infringement notice penalty for an alleged offence is one-fifth of the maximum fine that a court could impose as a penalty for that offence.

Note 1 The infringement notice penalty for an offence must not be more than one-fifth of the maximum fine that a court could impose for the offence: see subsection 40 (2) of the Act.

Note 2 The maximum penalty for a body corporate is 5 times the penalty that could be imposed on an individual: see subsection 4B (3) of the *Crimes Act 1914*.

- (3) An infringement notice must be served on the person not more than 12 months after the alleged commission of the offence.

Regulation 8

8 Form of notice

- (1) An infringement notice must be in a form approved by the Regulator and must set out the following:
 - (a) the date of the notice;
 - (b) the provision of the Act that creates the offence;
 - (c) the name and address of the person alleged to have committed the offence;
 - (d) the date, time and place of the alleged offence;
 - (e) the nature and a brief description of the alleged offence;
 - (f) the infringement notice penalty for the alleged offence and the maximum penalty that may be imposed by a court for the offence;
 - (g) the manner in which the infringement notice penalty may be paid;
 - (h) a statement that, if the person prefers that the matter not be dealt with by a court, the person may signify that preference by paying the infringement notice penalty:
 - (i) before the end of 28 days after the day the notice is served; or
 - (ii) if a further period is allowed by the Regulator under regulation 9 — before the end of that further period; or
 - (iii) if payment by instalments is permitted under regulation 10 — in accordance with the permission;
 - (i) a statement that if, before the end of 28 days after service of the notice, the person gives the Regulator, in the manner set out in the infringement notice, a statement of any facts or matters that the person believes ought to be taken into account in relation to the alleged offence (a *statement of matters for consideration*):
 - (i) time for payment of the penalty will be extended to the extent necessary to enable a decision to be made about the content of the statement; and
 - (ii) the Regulator must consider the matters mentioned in subregulation 11 (6);

Regulation 9

- (j) a statement that, if the infringement notice penalty is paid in time:
 - (i) the person's liability for the offence is discharged; and
 - (ii) further proceedings cannot be taken against the person for the offence; and
 - (iii) the person is not taken to have been convicted of the offence;
 - (k) a statement to the effect that, if none of the things mentioned in paragraphs (h) and (i) is done within the time specified, the person may be prosecuted for the alleged offence;
 - (l) the name of the person who serves the notice.
- (2) An infringement notice:
- (a) must include a unique identifier; and
 - (b) may contain any other information that the Regulator considers necessary.

9 Extension of time to pay

- (1) On written application by a person on whom an infringement notice has been served, the Regulator may, if satisfied that in all the circumstances it is reasonable to do so, grant a further period for payment of the infringement notice penalty, whether or not the period of 28 days after the date of service of the notice has ended.
- (2) If application is made after the end of the 28 day period, the application must include an explanation why the alleged offender could not deal with the notice within that period.
- (3) The Regulator must:
 - (a) grant, or refuse to grant, a further period; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal — mention the reasons for refusal in the notice.

Regulation 11

- (4) The person must pay the penalty:
 - (a) if a further period is granted — before the end of that period; or
 - (b) if the decision is a refusal — before the end of the later of the following:
 - (i) 7 days after receiving notice of the refusal;
 - (ii) the 28 day period.

10 Payment by instalments

- (1) If the Regulator is satisfied that in all the circumstances it is proper to do so, he or she may make an arrangement with a person on whom an infringement notice has been served (whether or not the period of 28 days after the date of service of the notice has ended) for the payment of the amount of the infringement notice penalty by instalments.
- (2) The Regulator must:
 - (a) make or refuse to make an arrangement; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (3) The person must pay the penalty:
 - (a) if an arrangement is made — in accordance with the arrangement; or
 - (b) if the decision is a refusal — before the end of the later of the following:
 - (i) 7 days after receiving notice of the refusal;
 - (ii) the 28 day period.

11 Decision whether to withdraw infringement notice

- (1) The Regulator may, without having received a statement of matters for consideration from a person, withdraw an infringement notice served on the person if he or she is satisfied that in all the circumstances it is proper to do so.

Note For *statement of matters for consideration*, see paragraph 8 (1) (i).

Regulation 11

- (2) If the Regulator withdraws an infringement notice, he or she must give written notice of the decision to the person concerned.
- (3) If, before the end of 28 days after receiving an infringement notice, a person gives the Regulator a statement of matters for consideration, the Regulator must:
 - (a) decide whether to withdraw, or refuse to withdraw, the infringement notice; and
 - (b) give the applicant written notice of the decision; and
 - (c) if the decision is a refusal — mention in the notice the reasons for refusal.
- (4) If the Regulator decides to refuse to withdraw an infringement notice, notice of that decision must state that:
 - (a) if the amount of the infringement notice penalty is paid within 28 days after notice of the decision is given to the person, the person will not be prosecuted for the alleged offence; and
 - (b) if that amount is not paid in accordance with paragraph (a), the person may be prosecuted for the alleged offence.
- (5) If:
 - (a) a person pays an infringement notice penalty within 28 days after service of the notice, or within any further period allowed by the Regulator; and
 - (b) the notice is withdrawn after the person pays the penalty; the Regulator must refund to the person an amount equal to the amount paid.
- (6) In making a decision whether to withdraw an infringement notice, the Regulator must consider:
 - (a) the facts or matters set out in any statement of matters for consideration; and
 - (b) the circumstances in which the offence mentioned in the notice is alleged to have been committed; and
 - (c) whether the person has been convicted previously of an offence against the Act; and

Regulation 14

- (d) whether an infringement notice has previously been given to the person for an offence of the same kind as the offence mentioned in the notice; and
- (e) any other matter the Regulator considers relevant to the decision.

Note Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

12 Payment of penalty if infringement notice not withdrawn

If the Regulator refuses to withdraw an infringement notice, the applicant for withdrawal must pay the infringement notice penalty before the end of 28 days after receiving notice of the refusal.

13 Effect of payment of infringement notice penalty

- (1) If a person served with an infringement notice pays the infringement notice penalty in accordance with this Part:
 - (a) the person's liability in respect of the offence is discharged; and
 - (b) further proceedings cannot be taken against the person for the offence; and
 - (c) the person is not convicted of the offence.
- (2) Subregulation (1) applies to a person who makes an arrangement to pay the infringement notice penalty by instalments, only if the person makes payments in accordance with the arrangement.
- (3) The payment of an infringement notice penalty by a person is not an admission of guilt in relation to the alleged offence.

14 Admissions in statement of matters for consideration

Evidence of an admission made by a person in a statement of matters for consideration is inadmissible in proceedings against the person for the alleged offence.

Regulation 15

15 Matter not to be taken into account in determining sentence

- (1) This regulation applies if a person served with an infringement notice:
 - (a) elects not to pay the infringement notice penalty; and
 - (b) is prosecuted for, and convicted of, the alleged offence mentioned in the infringement notice.
- (2) In determining the penalty to be imposed, the court must not take into account the fact that the person chose not to pay the infringement notice penalty.

16 Evidence for hearing

- (1) At the hearing of a prosecution for an offence mentioned in an infringement notice, any of the following certificates, if signed by the Regulator or a delegate, is evidence of the facts stated in the certificate:
 - (a) a certificate stating that the infringement notice was served on the alleged offender;
 - (b) a certificate stating that the infringement notice penalty has not been paid in accordance with this Part;
 - (c) a certificate stating that the infringement notice was withdrawn on a day specified in the certificate;
 - (d) a certificate stating that:
 - (i) under regulation 9, a further period for payment of the infringement notice penalty was refused; and
 - (ii) the infringement notice penalty has not been paid in accordance with this Part;
 - (e) a certificate stating that:
 - (i) for regulation 9, the further time mentioned in the certificate for payment of the infringement notice penalty was granted; and
 - (ii) the infringement notice penalty was not paid in accordance with the notice or within the further time.

Regulation 18

- (2) A certificate that purports to have been signed by the Regulator or a delegate is taken to have been signed by that officer unless the contrary is proved.

17 Payment of penalty by cheque

If a cheque is given to the Commonwealth in payment of all or part of the amount of an infringement notice penalty, the payment is taken not to have been made unless the cheque is honoured on presentation.

18 Infringement notice not compulsory, etc

Nothing in this Part is to be taken to:

- (a) require that a person suspected of having contravened a provision of the Act be served an infringement notice; or
- (b) affect the liability of a person to be prosecuted for an alleged offence, if:
 - (i) an infringement notice is not served on the person for the offence; or
 - (ii) an infringement notice is served, and withdrawn; or
- (c) limit the penalty that may be imposed by a court on a person convicted of an offence.

Regulation 19

Part 9 WELS inspectors**19 Identity card (Act s 46)**

- (1) For paragraph 46 (2) (a) of the Act, an identity card issued to a WELS inspector must include, on the side that bears the inspector's photograph:
- (a) the name of the Act; and
 - (b) the inspector's name; and
 - (c) the dates of issue and expiry of the card; and
 - (d) a statement that the person is a WELS inspector; and
 - (e) the name, position and signature of the person who issued the card.

Note An identity card for a WELS inspector must contain a recent photograph of the inspector: see paragraph 46 (2) (b) of the Act.

- (2) The reverse side of the card must include a statement to the effect that it is an offence for a person who ceases to be an inspector to fail to return the card to the Regulator.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.