



Australian Government  
Department of Agriculture  
and Water Resources

# Infringement Notice Statement

## Water Efficiency Labelling and Standards Scheme

Water Efficiency Labelling and Standards Regulator

July 2017



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Water Efficiency Labelling and Standards Regulator  
Water Efficiency Labelling and Standards Scheme  
Department of Agriculture and Water Resources  
Postal address GPO Box 858 Canberra ACT 2601  
Telephone 1800 372 746 (local calls) +61 2 6272 5232 (international)  
Email [welscompliance@agriculture.gov.au](mailto:welscompliance@agriculture.gov.au)  
Web [agriculture.gov.au](http://agriculture.gov.au)

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# Introduction

The Water Efficiency Labelling and Standards (WELS) scheme is established and operates under the *Water Efficiency Labelling and Standards Act 2005 (Cth)* (the WELS Act) and corresponding state and territory legislation. The WELS scheme is a cooperative initiative between the Australian Government, state and territory governments and industry. The Australian Government administers the scheme on behalf of the other governments.

The WELS Act establishes the WELS Regulator, and defines the Regulator's functions and powers relating to the overall administration of the WELS scheme. The Regulator has the following functions:

- to administer the WELS scheme
- to provide information and advice in relation to the WELS scheme
- to undertake or commission research in relation to the WELS scheme
- to monitor and enforce compliance with the WELS scheme
- such other functions as conferred on the Regulator, included in the WELS Act or any other law.

The WELS Regulator may use a range of compliance and enforcement tools in regard to suspected non-compliance with the WELS Act, including the giving of infringement notices under the Commonwealth, state or territory WELS legislation.

The legal framework supporting the giving of infringement notices is set out in the WELS Act and Part 8 of the *Water Efficiency Labelling and Standards Regulations 2005* (WELS Regulations). The *Water Efficiency Labelling and Standards Scheme Infringement Notice Statement* (this Statement) sets out how these requirements are to be addressed by the WELS Regulator or their delegate.

This statement is supported by the *WELS Compliance and Enforcement Policy 2017*, which sets out the approach taken by the WELS Regulator to maximise compliance with the requirements of the WELS Act. This Policy can be accessed at [www.waterrating.gov.au/industry/compliance-enforcement](http://www.waterrating.gov.au/industry/compliance-enforcement).

# Infringement notices under the WELS Act

Infringement notices provide a relatively simple administrative method, used widely under Commonwealth, state and territory legislation, for dealing with alleged contraventions of the law. An infringement notice provides an alternative to prosecution for certain criminal offences under the WELS Act or proceedings for a civil penalty order under the WELS Act. If the person who has been given an infringement notice chooses to pay the amount specified by the notice on time, and the notice is not withdrawn, all liability regarding the alleged contravention is discharged and no further proceedings may be taken against that person for that alleged contravention/s.

A person who has been given an infringement notice may choose not to pay the amount. However, if a person does not pay an infringement notice, that person may be prosecuted in a court for the alleged offence(s) and/or proceedings seeking a civil penalty order may be brought in relation to the alleged contravention. The court will then make its decision on the penalty amount for the contravention up to the maximum penalty for that contravention, not just the infringement notice penalty (see Appendix A).

A person may apply for an extension of time to pay or an arrangement to pay by instalments. A person may also seek to have the notice withdrawn.

Issuing an infringement notice is not a mandatory response to an alleged contravention and the WELS Regulator may choose to take other enforcement action or administrative sanctions, including commencing either criminal or civil proceedings rather than issuing a notice.

An infringement notice must be given within 12 months after the day on which the alleged contravention occurred.

Where the WELS Regulator becomes aware of a contravention more than 12 months after the contravention is alleged to have taken place, an alternative form of action can be commenced, such as referring the matter for prosecution.

## The penalty amount

The penalty amount for an infringement notice is expressed in penalty units. Section 4AA of the *Crimes Act 1914* sets the monetary amount of a single penalty unit, which is currently \$210.

Consistent with the legislative framework, amounts payable for each infringement notice start from \$630 up to \$1 260 for an individual and \$3 150 up to \$6 300 for a body corporate.

## Issuing of infringement notices

An infringement notice may be given if:

- the Regulator has reasonable grounds to believe a person has contravened a strict liability provision or civil penalty provision of the WELS Act
- this contravention took place within the last 12 months, and

- the Regulator decides to exercise their discretion to give a notice.

The Regulator's decision to give an infringement notice will be made in a manner consistent with the approach set out in the WELS Compliance and Enforcement Policy 2017.

## **How many infringement notices can be given?**

- If a person contravenes a single provision of the WELS Act, they can be given an infringement notice for the contravention of the provision. For example, a supplier is found to have supplied a single unregistered WELS product (contravening section 33 of the WELS Act) – the WELS Regulator may give an infringement notice for this contravention.
- If a person contravenes a provision of the WELS Act, and that contravention applies to multiple different products, they can be given an infringement notice for each product. For example, a supplier is found to have supplied five different WELS products that are all unregistered (contravening section 33 of the WELS Act) – the WELS Regulator may give five separate infringement notices for these five contraventions.
- If a person contravenes a single provision of the WELS Act in multiple ways in relation to the supply of a WELS product, they can be given multiple infringement notices. For example, a supplier is found to have 10 units of a registered WELS product on a floor display. Five have WELS labels that are incorrect, the other five have no WELS labels at all. Both of these situations contravene section 34 of the WELS Act. The WELS Regulator may give two infringement notices in total in relation to this product: one in relation to the supply of the product with an incorrect label and one in relation to the supply of the product with no label.

## **Payment of infringement notices**

An infringement notice will prescribe a timeframe of 28 days after the day the notice is given by which the relevant amount is payable.

Payment of an infringement notice can be made either by cheque, money order or electronic payment of funds. The details of how to make the payment will be included in the infringement notice.

If an infringement notice is not paid and the matter proceeds to prosecution or civil litigation the court may decide to increase the penalties. For example, an individual may be liable to a penalty from \$6 300 up to \$12 600 and a body corporate may be liable to a penalty from \$31 500 up to \$63 000 per contravention. Individuals and body corporates may also be liable to pay the WELS Regulator's costs in any proceedings. See Appendix A for more information.

## **Payment of infringement notices – extension of time to pay**

Regulation 10 of the WELS Regulations provide that a person who has been given an infringement notice may apply to the WELS Regulator, in writing, for an extension of time to pay the penalty. Payment extension requests must be received by the Regulator before the due date for payment and will be considered on a case by case basis. The request should set out clearly why the infringement notice cannot be paid on time.

If the WELS Regulator does not extend the period, the infringement notice is payable by the later of:

- the initial payment due date of the infringement notice, or
- 7 days after the day the person was given notice of the Regulator's decision not to extend the time to pay.

## **Payment by instalment**

Regulation 11 of the WELS Regulations provide that a person who has been given an infringement notice may apply to the WELS Regulator, in writing, to make an arrangement to pay the penalty by instalments. Requests for payment by instalments must be received by the Regulator before the due date for payment and will be considered on a case by case basis. Recipients should set out clearly why they have limited capacity to pay the penalty in full, at one time.

The WELS Regulator will make a decision to make or refuse to make a payment by instalment arrangement. If the Regulator refuses to make an arrangement a written notice will be provided mentioning the reasons for refusal and the full infringement notice amount is payable by the later of:

- the initial payment due date of the infringement notice, or
- 7 days after the person was given notice of the refusal to make an arrangement to pay by instalments.

# Withdrawing an infringement notice

The WELS Regulator can, in accordance with regulation 12 of the WELS Regulations, withdraw the infringement notice at any time. The person must be notified of the withdrawal of the infringement notice. If the infringement notice is withdrawn after payment of the penalty, the penalty paid will be refunded. The withdrawal of an infringement notice may be followed by the commencement of court proceedings for the same alleged contravention of the WELS Act, or for another alleged contravention.

A person who has been given an infringement notice may make written representations to the Regulator seeking the withdrawal of the infringement notice.



# Information sharing with other regulators

In undertaking compliance and enforcement activities, the WELS Regulator may share information with other regulators such as the Australian Taxation Office, Australian Competition and Consumer Commission, Australian Building Codes Board, Greenhouse and Energy Minimum Standards Regulator and state and territory government consumer protection agencies. Information sharing will be in accordance with the Regulator's obligations under privacy laws.

# Appendix A

## Schedule of Infringement Penalty Amounts under the Commonwealth WELS Act

Amounts in Table 1 are based on \$210 per penalty unit (pu). The pu amount is periodically raised in accordance with section 4AA of the *Crimes Act 1914*.

The Section references in the first column in the table align with the Commonwealth WELS Act and may not align with the State and Territory WELS Acts.

**Table 1 Schedule of Infringement Penalty Amounts under the Commonwealth WELS Act**

Section of the WELS Act	Description  (see Commonwealth WELS Act for full descriptions)	Maximum penalty for infringement notice		Maximum penalty under the WELS Act	
		natural person	body corporate	natural person	body corporate (for civil penalties only)
32A	Providing misleading information or a misleading document for an application for registration	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
33	Supplying unregistered WELS products	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
34	Supplying WELS products that are not WELS labelled	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
35	Supplying WELS products that do not comply with minimum water efficiency requirements	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
36	Supplying WELS products that do not comply with minimum general performance requirements	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
37	Using the standard, or information, in a way that is inconsistent with the standard	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
37A	WELS-labelling products that are not WELS products	6 pu \$1260	30 pu \$5400	60 pu \$12600	300pu \$63000
38	Using information inconsistent with the information contained in the applicable WELS standard for the product	6 pu \$1260	30 pu \$6300	60 pu \$12600	300pu \$63000
43A	Failing to comply with a notice requiring a compliance audit	3 pu \$630	15 pu \$3150	30 pu \$6300	150 pu \$31500
43B	Failing to comply with a notice to take remedial action	3 pu \$630	15 pu \$3150	30 pu \$6300	150 pu \$31500