

# Criminal Offences and Civil Penalties under the WELS Act (effective 23 July 2012)

New criminal offences and civil penalties provisions in the Commonwealth *Water Efficiency Labelling and Standards Act 2005* (Cth) (the **WELS Act**) came into effect on 23 July 2012.

The following provisions now apply:

## **Providing false or misleading information or documents with an application for registration of a WELS product (Section 32A)**

This strict liability penalty is already a criminal offence under the Criminal Code, and is also now identified as a civil penalty in the WELS Act.

This provision would apply where information provided in an application for registration is false or misleading, such as supplying a false test report or certificate.

Civil Penalty: 60 penalty units

## **Supplying an unregistered WELS product (Section 33)**

This strict liability offence has been amended so that it is up to the supplier of the WELS product to prove that the WELS product was registered at the time of supply.

The practical effect is that suppliers now bear a bigger share of the responsibility for establishing whether a WELS product is registered than previously. It is in their interest to provide early and full assistance to the Regulator in identifying the registration details for a product in dispute.

While the Regulator will continue to make proper efforts to establish whether a product is registered before bringing criminal or civil penalty proceedings, it is not required to prove to the court that a WELS product is not registered. Instead, it will be up to the supplier to give evidence in its defence that shows a reasonable possibility that the WELS product is registered.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units

## **Supplying a WELS product that is not WELS-labelled (Section 34)**

This strict liability offence previously related to supplying a registered WELS product without correct WELS-labelling, and has been amended to apply to any WELS product that is not WELS labelled (whether or not it is registered) that is required by the standard to be WELS-labelled.

'WELS-labelled' not only refers to the presence of a label, but that the label meets the requirements of the WELS standard. These requirements can relate to the design and content of the label as well as to other factors such as the circumstances in which it is used (such as in advertising materials).

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units



## Supplying a WELS product required to be registered and required to comply with minimum water efficiency requirements which does not comply with those minimum water efficiency requirements (Section 35)

This strict liability offence would apply, for example, where a WELS standard requires a WELS product to have a minimum star rating and the WELS product was supplied despite having a lower star rating.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units

## Supplying a WELS product required to be registered and required to comply with minimum general performance requirements which does not comply with those minimum general performance requirements (Section 36)

Relevant Australian Standards set various performance tests that products must pass other than flow rate tests. This strict liability offence would apply, for example, if a shower does not distribute water evenly, or a washing machine does not remove soil adequately.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units

## Supplying a WELS product using the WELS standard or information included in a WELS standard for, or in relation to the supply, in a manner that is inconsistent with the standard (Section 37)

This strict liability offence would apply, for example, by misrepresenting the meaning of a WELS standard in a product brochure or online advertisement, e.g. if the WELS standard uses between 0 and 6 stars to demonstrate efficiency, but the brochure claims that a product has a '10 star WELS rating'.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units

## WELS-labelling products that are not WELS products (Section 37A)

This is a new strict liability offence and corresponding civil penalty provision for 'WELS-labelling' a product which is not in fact a product included in the WELS scheme. This is intended to ensure that suppliers of non-WELS products (for example suppliers of bidets) cannot supply these products with what appears to be a WELS label in order to incorrectly infer compliance with the WELS scheme and gain a potential market advantage over competitors.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units

## Supplying a registered WELS product with a WELS label that is inconsistent with the information contained in the applicable WELS standard for the product (Section 38)

This strict liability offence would apply, for example, when displaying a product with additional labels or markings of a type that contradict the message of the approved label.

Criminal Penalty: 60 penalty units

Civil Penalty: 60 penalty units



## Failure to conduct an audit of compliance as required by the Regulator (Section 43A)

This is a new strict liability offence and corresponding civil penalty provision. It applies if the Regulator has issued a notice to undertake an audit if the Regulator suspects, on reasonable grounds, that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute an offence against this Act or a contravention of a civil penalty provision.

In those cases, the Regulator may require the person to undertake an audit of compliance, e.g. a stocktake of WELS registration status of their products. The criminal offence or civil penalty would apply if the person failed to carry out the audit as required.

Criminal Penalty: 30 penalty units

Civil Penalty: 30 penalty units

## Failure to undertake remedial action as required by the Regulator (Section 43B)

This is a new strict liability offence and corresponding civil penalty provision. It applies if the Regulator has issued an order to undertake remedial action because the Regulator suspects, on reasonable grounds, that a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute an offence against this Act or a contravention of a civil penalty provision and that order has not been carried out.

An example of an order for action may include a registrant notifying a WELS Supplier in the supply chain that a specific product's registration has been cancelled.

Criminal Penalty: 30 penalty units

Civil Penalty: 30 penalty units

## Failure to give WELS information to WELS inspectors (Section 61)

The Regulator may issue a written notice requiring a person who has WELS information to give specified information and supporting evidence (e.g. books, records or documents) to a WELS Inspector .

An example may include the Regulator seeking information relating to the supply of WELS products.

Non-compliance with this provision is a criminal offence.

Penalty: Imprisonment for six months

## Failure to appear before a WELS inspector and failure to answer questions or provide materials (Section 62)

The Regulator may issue a written notice requiring a person who has WELS information to appear before a WELS Inspector to answer questions or produce specified material (e.g. books, records or documents).

Non-compliance with this provision is a criminal offence.

Penalty: Imprisonment for six months.

## Further information

For further information please call 1800 218 478 or email [WELS@environment.gov.au](mailto:WELS@environment.gov.au)

