

Changes to the definition of Supply under the WELS Act (effective 23 July 2012)

The *Water Efficiency Labelling and Standards Act 2005* (Cth) (the WELS Act) requires that specified products must be registered and WELS-labelled for the purposes of supply. Failure to properly register and correctly label a WELS product may be a criminal offence or attract a civil penalty.

On 23 July 2012, changes to the compliance and enforcement aspects of the WELS Act came into effect. One of the changes relates to the definition of 'supply'.

Supply for the purposes of providing or making available a WELS product is now defined in section 7A of the WELS Act:

7A Meaning of supply

- (1) A supply of a WELS product means a supply of the product in the course of trading or commercial activities, and includes:
 - (a) an offer to supply; and
 - (b) a supply (including a re-supply) by way of sale, exchange, gift, lease, loan, hire or hire-purchase; and
 - (c) a supply as part of the supply of another thing (including as a fitting or fixture).
- (2) For the purposes of subsection (1):
 - (a) offer to supply includes make available, expose, display or advertise; and
 - (b) it is irrelevant whether the supply is:
 - (i) for consideration; or
 - (ii) a wholesale or retail supply.

'Supply' covers a range of transactions where a WELS product is deemed to be 'offered' or 'supplied' in a commercial or trading environment, and not necessarily in the context of being offered for trade or sale in the strictest sense. In other words, there need not be an exchange of money for the particular WELS product for a transaction to be deemed a 'supply' for the purposes of the WELS Act.

The definition of supply was amended following concerns raised by stakeholders, during the 2010 independent review of the WELS scheme, that kitchen manufacturers, property developers and others who supply WELS products were not meeting the same requirements as retailers who sell WELS products to consumers. This definition makes clear that it covers a wider range of supplies, such as those involving business transactions including leases in addition to 'sales'.

The definition of supply was also amended to be clear that it covered supplies through channels including kitchen manufacturers and property developers as new WELS products are often supplied as part of another (non-WELS) product, for example in new buildings or renovated kitchens.

The amendment is intended to provide a regulatory environment which has clearer application to the various suppliers of WELS products. It is intended to assist consumers who are buying WELS products as part of a building, renovation or lease package, in being aware of the water efficiency of those products at the time of purchase.



Under the amended WELS Act, a WELS product is deemed to be supplied for the purposes of WELS if it is:

- an offer to supply (which includes and is not necessarily limited to) products offered for sale on a shop or warehouse floor, internet sales, and advertisements on electronic and non electronic media including television, magazines, newspapers, sale catalogues and trade brochures;
- a supply (which includes re-supply along the supply chain i.e. from manufacturers to suppliers to retailers) by way of sale, exchange, gift, lease, loan, hire or hire-purchase. Examples would include new replacement products for faulty goods under a warranty or any other arrangement; exchange of products for a WELS product; prizes offered by commercial or trading companies as part of a competition, raffle or loyalty programs; and rental of new WELS product/s (with or without the view of purchasing the product at the end of the lease period);
- part of a fitting or fixture of a new house. Therefore, all new WELS products, whether a fitting such as taps or shower-heads or fixtures such as toilets, clothes washing machine or dishwashers used in the display or building of new homes must be registered and carry a valid WELS label; and
- part of a service, maintenance or supply to provide new WELS product as part of a maintenance or other contracted service. e.g. under a tenancy or home improvement or repair service such as a renovated kitchen, laundry or bathroom.

Further information

For further information about WELS please call 1800 218 478 or email WELS@environment.gov.au

