Water Efficiency Labelling and Standards (Registration Fees) Bill 2013

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Law and Bills Digest Section

Contents

Purpose of the Bill............................................................................................................................................ 2
Background .................................................................................................................................................. 2
   Water Efficiency Labelling and Standards Scheme................................................................................. 2
   Independent review of the WELS scheme............................................................................................... 4
Australian Government Cost Recovery Guidelines .................................................................................. 5
Imposing a Tax............................................................................................................................................. 6
Committee consideration .......................................................................................................................... 6
   Senate Selection of Bills Committee ...................................................................................................... 6
   Senate Environment and Communications Legislation Committee ..................................................... 6
   Senate Standing Committee for the Scrutiny of Bills ............................................................................ 7
   Parliamentary Joint Committee on Human Rights .............................................................................. 7
Position of major interest groups .............................................................................................................. 8
Financial implications................................................................................................................................. 8
Key issues and provisions.......................................................................................................................... 9
   Part 1—preliminary matters .................................................................................................................. 9
   Part 2—registration fees ...................................................................................................................... 9
   Part 3—miscellaneous .......................................................................................................................... 9
Concluding comments .............................................................................................................................. 10
Water Efficiency Labelling and Standards (Registration Fees) Bill 2013

Date introduced: 13 March 2013

House: House of Representatives

Portfolio: Sustainability, Environment, Water, Population and Communities

Commencement: The day after Royal Assent

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill's home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013 (the Bill) is to provide the legislative basis to recover costs for all the activities relating to the Water Efficiency Labelling and Standards Scheme (WELS scheme) by imposing a tax.

The Bill is a companion to the Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013 (the companion Bill) which amends the Water Efficiency Labelling and Standards Act 2005 (the WELS Act) to enable fees to be collected and administered by the WELS scheme Regulator.

Background

Water Efficiency Labelling and Standards Scheme

The WELS Act established the WELS scheme. The WELS scheme was initially intended to progressively apply water efficiency labelling requirements and minimum water efficiency standards

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2. Details of the Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013 can be viewed on the Bill's homepage: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%22bills%2Fbillhome%2Fb4989%22


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to certain water-use\(^4\) and water-saving\(^5\) products such as washing machines, dishwashers, toilets, shower heads, taps and urinals.\(^6\)

At the time that the WELS Act was enacted, the emphasis was on labelling rather than requiring efficiency standards on all the products.\(^7\)

The object of the WELS scheme is to ‘conserve water supplies by reducing consumption through providing information to consumers about the water efficiency of products and by promoting the adoption of water efficient technologies’.\(^8\) In order to achieve these objects, the WELS scheme requires ‘registration and labelling of specified products to show their water efficiency for the purposes of supply, and setting minimum water efficiency standards which products must meet if they are to be supplied’.\(^9\)

The Commonwealth Minister determines which water-using or water-saving products will come under the scheme. In order to make a determination, the Commonwealth Minister requires the agreement of the majority of states and territories.\(^10\) The WELS scheme currently includes the following:

... toilets, clothes washing machines, dishwashers, urinals, taps and showers. These products must display, at the point of sale, a star rating of their water efficiency and information about the volume of water used. Only toilets have a minimum water efficiency standard... Flow controllers can be registered and labelled under the scheme on a voluntary basis.\(^11\)

The Explanatory Memorandum to the Water Efficiency Labelling and Standards Bill 2005 stated that:

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4. Section 7 of the Water Efficiency Labelling and Standards Act 2005 defines the term, water-use product as a device, appliance or fitting through which, or into which, water flows as part of its normal operation.

5. Section 7 of the Water Efficiency Labelling and Standards Act 2005 defines the term water-saving product as a device, appliance or fitting that is not a water-use product; and is designed to operate in place of a water-use product.


7. Ibid.


11. Ibid.
The Government has committed $1.8 million over five years from 2003/2004 to establishing and implementing the WELS scheme under the Sustainable Cities program. Once the scheme is in full operation, total costs are estimated at approximately $900,000 per year.12

Relevant to this Bill, the Explanatory Memorandum also noted that it was ‘possible that cost recovery could be implemented to help meet expenditure requirements’.

**Independent review of the WELS scheme**

Section 76 of the WELS scheme be undertaken as soon as possible after the fifth anniversary of the commencement of the WELS scheme.13 The independent review was required to be undertaken by persons who are, in the opinion of the Minister, appropriately qualified persons, and was required to include one or more persons who are not APS employees.14

The Independent Review (the Review) was carried out, as required by the WELS Act, in 2010 by Dr Chris Guest.15 Recommendation 10.1 of the Review report was that:

(i) The Commonwealth Minister seek agreement from the Minister for Finance that the scheme not be cost recoverable;

(ii) If the Minister for Finance agrees, then the registration fee recover only the cost of the registration process; and

(iii) All governments contribute the funds required to meet the gap between registration income and the funding required for the three-year strategic plan.16

At its meeting of 30 November 2011, the Council of Australian Governments Standing Council on Environment and Water (SCEW):

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13. That is, five years after 18 March 2005.


15. Dr Chris Guest was engaged to undertake the review. Dr Guest has extensive water and natural resource management experience, including leading the negotiation of the referral of powers by Murray Darling Basin states to the Commonwealth in relation to Basin water planning and management, and design and implementation of the National Water Market System. Also he was General Manager of Regulatory Strategy and Reform for the Sydney Water Corporation and Deputy Director-General the NSW Cabinet Office. Source: Department of Sustainability, Environment, Water, Population and Communities website, ‘About the review’, viewed 24 April 2013, [http://www.environment.gov.au/water/wels-review/about.html](http://www.environment.gov.au/water/wels-review/about.html)


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• approved the 2012–15 Strategic Plan for the WELS scheme
• agreed to release the joint governments’ response to the Review of the WELS scheme and
• agreed that the scheme should recover 80 per cent of its costs from the plumbing and
whitegoods industry sectors.\(^\text{17}\)

Consistent with the SCEW communiqué, the joint response from the Australian Government and states and territories confirmed that there was no agreement to Recommendation 10.1 of the Review report, stating that:

Proposed new funding arrangements, including improved cost recovery, are to be implemented to ensure the ongoing sustainability of the scheme.\(^\text{18}\)

**Australian Government Cost Recovery Guidelines**

In 2002, the Australian Government developed a ‘cost recovery’ policy which ‘involves charging the non-government sector for the provision of government goods, services or regulation’.\(^\text{19}\) The Australian Government Cost Recovery Guidelines state:

Cost recovery is the recovery of some or all of the costs of a particular activity. Australian Government cost recovery charges fall into two broad categories:

- fees for goods and services; and
- ‘cost recovery’ taxes (primarily levies, but also some excises and customs duties).\(^\text{20}\)

The current Bill aims to recover 80 per cent of the costs of all activities associated with the WELS scheme, consistent with the agreement by the SCEW in 2011.\(^\text{21}\)

According to the Minister for Sustainability, Environment, Water, Population and Communities, Tony Burke:

In practice, this level of cost recovery was never achieved. The Water Efficiency Labelling and Standards Act 2005 provides for charging of fees in relation to a service. The effect of this is that only the costs of registration related activities may be recovered through WELS registration fees. Other activities of the

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scheme, including compliance and enforcement, communications and product standard development, may
only be taken into account in scheme fees when authorised by a cost recovery taxing statute.22

Imposing a Tax

The Bill imposes a tax. Under section 55 of the Commonwealth of Australia Constitution Act (the
Constitution)23 a law imposing a tax shall deal with only that particular matter. Any other matters
dealt with in the law are of no effect.

This is the reason why the other matters relating to registration fees which require amendment to
the WELS Act are dealt with in the companion Bill.

Committee consideration

Senate Selection of Bills Committee

The Bill has been referred to the Senate Standing Committee on Environment and Communications
(the Environment and Communications Committee), for inquiry and report by 17 June 2013.24
Comments by some of the submitters to the Environment and Communications Committee are set
out below.

Senate Environment and Communications Legislation Committee

The Committee reported on 31 May 2013. The majority of the Committee recommended the
passage of the Bills. The Coalition Senators had additional comments to make to the report. They
noted that although the Coalition is committed to the WELS Act, they did share the concerns
expressed by the Australian Industry Group (Ai Group) in its submission to the Committee, that
increased costs may be passed to consumers.25 The Coalition Senators had two recommendations to
make on this matter:

22. T Burke (Minister for Sustainability, Environment, Water, Population and Communities), ‘Second reading speech:
Water Efficiency Labelling and Standards (Registration Fees) Bill 2013’, House of Representatives, Debates, p. 1845,
23. The text of the Commonwealth of Australia Constitution Act can be viewed at:
http://www.comlaw.gov.au/Browse/Results/ByTitle/Constitution/Current/Co/0
24. Details of the inquiry including the terms of reference, submissions to the Environment and Communications
Committee and the final report can be viewed at:
2010-13/water_bills_2013/index.htm
25. Senate Environment and Communications Legislation Committee, Water Efficiency Labelling and Standards
(Registration Fees) Bill 2013 [Provisions] and Water Efficiency Labelling and Standards Amendment (Registration
Fees) Bill 2013 [Provisions], 31 May 2013, p. 10, viewed 4 June 2013,
2010-13/water_bills_2013/report/index.htm

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Recommendation 1

Coalition Senators recommend that government consider whether fees to be collected to cover part of the accreditation costs of the WELS scheme would be better collected from water utilities.

Recommendation 2

Coalition Senators recommend that the Bills be amended to provide for a review of the registration fees if the Bills are not amended to collect part of the accreditation costs of the WELS scheme from water utilities.  

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills commented that, while it prefers the rate of a levy or tax to be imposed in primary legislation as, ‘in general it is appropriate for Parliament to set a rate of tax’.  

In light of the explanation for the approach contained in the explanatory memorandum and the existence of some constraints on the setting of the fees, the committee makes no further comment and leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.

Parliamentary Joint Committee on Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.

The Parliamentary Joint Committee on Human Rights (the Joint Committee) published comments in relation to the Bill on 20 March 2013. The Joint Committee was of the view that the Bill (and the companion Bill) ‘do not appear to engage any human rights’ but noted that the WELS Act which the Bills amend, ‘contains regulatory and enforcement powers (including civil penalties) that raise a number of concerns that the committee has previously commented on in relation to other legislation’.

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26. Ibid., p. 10.
28. Ibid., p. 105.
29. The Statement of Compatibility with Human Rights can be found at page 2 of the Explanatory Memorandum to the Bill.
31. Ibid.

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Position of major interest groups

The Australian Water Association supports the intent of the Bill to recover 80 per cent of costs but recommends that a review be conducted of the impact of the revised fee structure to ensure that unintended consequences are taken into account—thus protecting the interests of manufacturers, suppliers/distributors and consumers. The peak industry body, the Water Services Association of Australia considers that to avoid possible impacts on customers, the WELS scheme should be government funded. It further expresses a hope:

... that any future revisions of the 80% rate will follow the open, collaborative and transparent process used to arrive at the current rate and include a thorough review of administrative processes relating to the scheme to improve efficiencies.

Although the Australian Industry Group (Ai Group) supports the fundamental purpose and objectives of the WELS scheme, it is concerned:

... that the proposal to impose on industry an even greater proportion of the overall costs of the WELS Scheme will undermine achievement of the Scheme’s objectives. Ai Group further contends that any consideration of the allocation of Scheme costs should factor in the extensive administrative, design, testing and quality assurance costs already incurred by industry participants in the Scheme.

Financial implications

The Explanatory Memorandum states that the Bill has no financial implications as the quantum of the WELS scheme registration fee will be set in a legislative instrument. The Bill is a taxing statute to allow the scheme to set fees and recover costs to the level of 80 per cent as originally intended by the Government of the day. As stated above, industry bodies are concerned about the increase in fees and the impact on industry and consumers.

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Key issues and provisions

Part 1—preliminary matters

Clause 4 provides that the Bill will apply to registration applications made in, or outside, Australia on or after 15 September 2013.36

Part 2—registration fees

Clause 7 provides for the imposition of registration fees for registration applications. Under subclause 7(1) the Minister may, by legislative instrument, specify the registration fees. The registration fees are imposed as taxes.37 A single registration application may have two or more registration fees specified.38 The Explanatory Memorandum notes that this subclause provides for flexibility in the future.39 A draft of an instrument made under subclause 7(1) must be provided by the Minister to each of the participating states or territories.40 However, the Explanatory Memorandum states that ‘if the Minister received comments from the states or territories, he or she would be able to take them into account only to the extent that they are related to the cost of administering the WELS scheme (as provided by subclause (8)(2) of the Bill).’41

The note to subclause 7(4) refers to proposed subsection 26(8) which will be inserted into the WELS Act by the companion Bill to the current Bill. It relates to matters concerning registration fees.

Clause 8 deals with matters relating to the amount of fees. Subclause 8(1) provides that a legislative instrument made under subclause 7(1) may specify the amount of the fee or the method by which the fee is calculated. The Minister must be satisfied that the fees set will recover no more than the cost of administering the WELS scheme and the WELS Act including corresponding State and Territory laws.42

Part 3—miscellaneous

Clause 9 provides for the Governor-General to make regulations for prescribing matters that are necessary to carry out or give effect to the Bill.

36. Subclause 6(1) of the Bill defines the term registration application as an application made under the Water Efficiency Labelling and Standards Act 2005 or a corresponding state-territory law, for registration of a WELS product (including renewal of registration).
37. Subclause 7(2) of the Bill.
38. Subclause 7(3) of the Bill.
40. Subclause 7(4) of the Bill.
41. Explanatory Memorandum, Water Efficiency Labelling and Standards (Registration Fees) Bill 2013, op. cit., p. 5.
42. Subclause 8(2) of the Bill.
Concluding comments

The current Bill provides the legislative basis for the Government to impose fees for registration applications.

It provides that in setting the fees, the Minister must ensure that they are designed to recover no more than the cost of administering the WELS scheme overall. The fees will be set out in a Ministerial determination, a draft of which must be given to the states and territories. Although it was decided in 2011 by COAG to recover 80 per cent of costs of the scheme, it is unclear whether the imposition of the registration fee as proposed will have the effect of increasing the cost of the products concerned—although industry stakeholders have indicated that it might do so.