Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013

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Law and Bills Digest Section

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Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013

Date introduced: 13 March 2013

House: House of Representatives

Portfolio: Sustainability, Environment, Water, Population and Communities

Commencement: Sections 1–3 commence on Royal Assent. Schedule 1 commences at the same time as the Water Efficiency Labelling and Standards (Registration Fees) Act 2013.1

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 Amendment (Registration Fees) Bill 2013 (the Bill) is to amend the Water Efficiency Labelling and Standards Act 2005 (the WELS Act)2 to make the necessary consequential changes to the WELS Act to give effect to the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013 (the companion Bill).

The companion Bill provides the power to recover costs of the Water Efficiency Labelling and Standards (WELS) scheme by imposing fees for registration as a tax.3

Background

Information about the general policy background to this Bill is set out in the Bills Digest to the companion Bill.4

1. Information about the originating Bill (the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013), Explanatory Memorandum and second reading speeches is contained on the Bill’s homepage which can be viewed at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillhome%2Fr4990%22

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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. Comments by submitters to the Environment and Communications Committee can be found in the companion Bill to this Bill.

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 and recommendations which are discussed in the Bills Digest to the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013.

Senate Standing Committee for the Scrutiny of Bills

The Senate Standing Committee for the Scrutiny of Bills had no comment on this Bill.

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

7. Ibid.
9. The Statement of Compatibility with Human Rights can be found at page 2 of the Explanatory Memorandum to the Bill.

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number of concerns that the committee has previously commented on in relation to other legislation’.  

### Position of major interest groups

Commentary concerning the views of major stakeholders on the current Bill can be found in the Digest for its companion Bill, the Water Efficiency Labelling and Standards (Registration Fees) Bill 2013. 

### Financial implications

The Explanatory Memorandum states that ‘this Bill by itself has no financial implications’. There are, however, financial implications in relation to the companion Bill which imposes registration fees as a tax.

### Key issues and provisions

#### Registration of WELS products

Subsection 26(1) of the WELS Act provides that the Minister must, by legislative instrument, formulate a scheme relating to the registration of WELS products. Subsection 26(2) of the WELS Act contains a list of the matters that may be provided for as part of the WELS scheme. Currently paragraph 26(2)(c) provides that a scheme formulated under subsection 26(1), may make provision for fees to be paid in connection with applications for registration, including the methods for calculating fees and the circumstances in which fees may be refunded or waived. Item 2 of the Bill amends paragraph 26(2)(c) of the WELS Act to confirm that the legislative instrument which formulates the WELS scheme cannot make provision for fees that are otherwise imposed by the Water Efficiency Labelling and Standards (Registration Fees) Act 2013. Those fees are imposed as taxes.

Item 3 of the Bill inserts proposed subsections 26(8) and (9). Proposed subsection 26(8) provides that the WELS scheme which is formulated under subsection 26(1) of the WELS Act, may require or permit the Regulator to refuse a registration application if the fee has not been paid, or has not been paid within the specified period set out in the scheme. The WELS scheme may also require or permit

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11. Ibid.
14. This requirement is satisfied by the Water Efficiency Labelling and Standards Determination 2013 which can be viewed at: http://www.comlaw.gov.au/Details/F2013L00067/Download
15. Section 10 and Schedule 1 of the Water Efficiency Labelling and Standards Determination 2013.
16. This is confirmed by the note after proposed subsection 26(8) which is inserted by item 3 of the Bill.
the Regulator to waive or refund a fee imposed by the companion Bill.\textsuperscript{17} \textbf{Proposed subsection 26(9)} provides that a provision of the scheme that relates to registration fees has effect or prevails if there is an inconsistency between it and another provision of the WELS Act, other than Part 11, or a provision of a state or territory law.\textsuperscript{18} Part 11 deals with the review of decisions made under the WELS Act. The Explanatory Memorandum states that ‘it is not intended to prevent review of decisions made for the purposes of subsection 26(8)’.\textsuperscript{19}

\textbf{Credits to the WELS Account}

Division 1 of Part 10 of the WELS Act deals with the WELS account which was established as a Special Account for the purposes of the \textit{Financial Management and Accountability Act 1997}.\textsuperscript{20} In particular, section 65 which is concerned with credits to the WELS account. \textbf{Item 4} of the Bill inserts \textbf{proposed paragraph 65(f)} which provides that amounts received by the Commonwealth as fees imposed by the \textit{Water Efficiency Labelling and Standards (Registration Fees) Act 2013} (when enacted) must be credited to the WELS account.

\textbf{Review of Decisions by the Regulator}

Subsection 69(1) of the WELS Act lists those decisions which are \textit{reviewable decisions}.\textsuperscript{21} \textbf{Item 5} of the Bill inserts \textbf{proposed paragraph 69(1)(c)} into the WELS Act so that a decision by the Regulator under the WELS scheme to refuse a request to waive or refund a fee in whole or in part imposed by the \textit{Water Efficiency Labelling and Standards (Registration Fees) Act 2013} (when enacted) will be a reviewable decision.

\textbf{Item 6} of the Bill inserts \textbf{proposed subsection 69(4)} which provides that a person is an \textit{affected person} in relation to paragraph 69(1)(c) of the WELS Act where that person’s request to waive or refund a fee has been refused. \textbf{Item 1} of the Bill contains a consequential amendment to the definition of \textit{affected person} in section 7 of the WELS Act.

\begin{itemize}
    \item \textsuperscript{17} The functions and powers of the Regulator are set out in Part 5 of the WELS Act.
    \item \textsuperscript{18} The Water Efficiency Labelling and Standards Declaration 2005 lists the corresponding state-territory laws. The text of the Declaration can be viewed at: \url{http://www.comlaw.gov.au/Details/F2007C00302/Download}
    \item \textsuperscript{19} Explanatory Memorandum, Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013, \textit{op. cit.}, p. 4.
    \item \textsuperscript{20} The text of the \textit{Financial Management and Accountability Act 1997} can be viewed at: \url{http://www.comlaw.gov.au/Details/C2012C00510/Download}
    \item \textsuperscript{21} Section 7 of the WELS Act provides that the term \textit{reviewable decision} has the meaning given by subsection 69(1).
\end{itemize}
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