

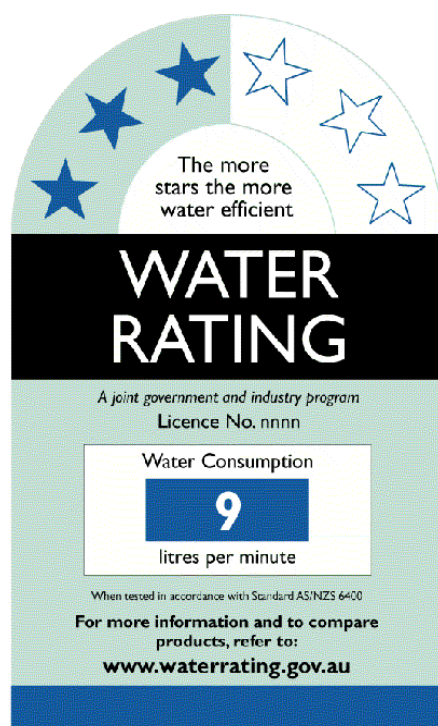


Australian Government

Department of the Environment and Water Resources

WELS Allegations Guide

General information on how to make allegations and how they will be treated.



A working document (March 2007)

This is a WELS Compliance Risk Management working document.
Prepared by the Water Policy Branch
Department of the Environment and Water Resources



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1. Introduction

The purpose of the *Water Efficiency Labelling and Standards Act 2005* (the WELS Act) is to provide for the establishment and operation of a scheme to apply national water efficiency labelling and minimum performance standards to certain water-use products. The aim of water efficiency labelling is to encourage the uptake of water-efficient products and appliances in domestic and commercial areas while maintaining individual choice and accounting for regional variations in water supply.

The objects of the Act are to:

- Conserve water supplies by reducing water consumption;
- Provide information for purchasers of water-use products; and
- Promote the adoption of efficient and effective water-use technology.

Transition dates to phase in the WELS Scheme

From 1 July 2006, the WELS Scheme became mandatory. Grace periods apply to WELS products imported or manufactured **before 1 July 2006**.

For these products:

- Unlabelled tap ware, showers, lavatory and urinal equipment may be retailed only until **31 December 2006**.
- Unlabelled dishwashing and clothes washing machines may be sold from manufacture/import right through to retail until **31 December 2007**.

All new products — that is, where the product has been manufactured or imported into Australia **on or after 1 July 2006** — must now be registered and labelled before they can be sold.

2. Aim

This protocol aims to advise members of the public and the industry on how to report offences against Part 7 of the WELS Act (Offences relating to the supply of WELS products). The Act, Regulations and Determination (which includes the WELS Standard), together with explanatory documentation, are made available on the Legislation page of the WES Internet site (<http://www.waterrating.gov.au>).

3. Is this a matter for the WELS Regulator?

The offences under Part 7 of the WELS Act relate to:

- *The registration of products*
It is an offence to supply unregistered WELS products which are required to be registered under the applicable WELS standard. (Section 33 of the Act)
- *Requirements for the labelling of registered products*
It is an offence to supply unlabelled WELS products which are required to be labelled under the applicable WELS standard. (Section 34)
- *Minimum water efficiency - products required to be registered*
It is an offence to supply WELS products which do not meet specified minimum water efficiency requirements required under the applicable WELS standard. (Section 35)
- *Minimum general performance - products required to be registered*
It is an offence to supply WELS products which do not meet specified minimum general performance requirements required under the applicable WELS standard. (Section 36)
- *Misuse of WELS standards and information*
It is an offence to supply WELS products and misuse the applicable WELS standard or use information that is inconsistent with the applicable WELS standard. (Section 37)
- *Information inconsistent with WELS standards*
It is an offence to supply a WELS product and use information that is inconsistent with the applicable WELS standard for that product. (Section 38)

Offences relating to misuse of information in the supply of products (Sections 37 and 38) includes (but is not limited to) information conveyed on or by:

- a product label; or
- product packaging; or
- any document or other material used for (or provided in connection with) supply; or
- any advertising that relates to the product. (Section 39)

4. How can a person report alleged offences?

We encourage members of the public to come forward and report suspected offences under the Act. The public and industry can assist the WELS Regulator to detect non-compliances and help identify potential compliance risks.

You can make allegations in person by phone or by email or by letter (see below).

We do not advise you to attempt to gather evidence or to attempt to prove that an offence has occurred. We do not want you to attempt to conduct your own investigation. To do so could pose risks to you, including the risk of breaking a range of Australian laws (eg related to property, crimes, privacy, etc), or it could risk destroying evidence and the integrity of a future investigation. You could cause evidence to be inadmissible in a court, which may result in a decision not to pursue enforcement/legal action or a failed prosecution.

Likewise it is important to be discreet about any allegation that you have made.

When making an allegation it is important to provide as much detail as possible so that the allegations can be substantiated. Unsubstantiated allegations are a basis for WELS inspectors not to pursue an investigation.

In general terms, we need documentation from you that will tell us who you are and anyone you were with, what your observations were, where the observations were made, the date and approximate time, and any other observations that seem to you to indicate that an offence under the Act has occurred.

Use the following checklist to help you prepare the information that the WELS Regulator and inspectors will need to assess your allegation of non-compliant conduct.

- Your name, your preferred title, your home address and your telephone numbers (work and home) so that the WELS Regulator can contact you if necessary.
- The names of the business and/or persons you believe are being non-compliant. Please also include their address and contact details, if known, and any other information you believe may be relevant.
- A summary of the matter you are reporting.
- Names, dates, times, locations and any other information you believe may be relevant to people you observed.
- How you became aware of the matter.
- Details of whom else might know about this matter together with their names and contact details. Indicate whether they are aware that you have provided their details to us.
- Details of any other agencies you have reported this matter to, together with any information on: the names of those other agencies; people you spoke/wrote to and their contact details; and when you contacted them and their responses.
- Details of any documents, records or other information you know of that may be relevant. You do not need to provide these documents to the WELS Regulator - they will be requested if needed.
- Any information provided to the WELS Regulator concerning alleged offences will be treated in the strictest confidence. However, if the WELS Regulator decides to pursue the matter or decides to refer it to another agency (e.g. the Director of Public Prosecutions), it may be necessary to identify you as the

source of this information. Do you consent to your name and contact details being disclosed to another agency?

5. How will allegations be treated?

Allegations will be investigated by WELS inspectors. Investigations are comprehensive assessments of the possible commission of an offence or offences under the Act. Investigations can arise from allegations, and/or WELS intelligence and strategic risk management, and/or referral from monitoring, and/or other investigations, and/or audits.

On a case-by-case basis we may, as an alternative to taking legal action on an alleged offence, divert non-compliant organisations towards compliance through education and administrative actions. This will be done as part of an operational approach that will:

- Maintain the WELS Regulator's capacity to take enforcement action where necessary; and
- Not compromise the objectives of the scheme or the credibility of the label, or the standard.

6. Analysis and assessment

All information arising from an allegation is analysed to help the Regulator understand the nature and scope of the alleged offence. Your information may assist with other matters of current or future interest to the compliance risk management of the WELS Scheme.

Investigations are discussed under the Inspector's Protocol on the Compliance Risk Management page of the WELS internet site (<http://www.waterrating.gov.au/>).

The outcomes of investigations can include:

- A finding that there is insufficient evidence to substantiate an allegation and that low-level monitoring or no further action should be the result;
- Determining that education and/or administrative compliance management responses would be an appropriate course of action; and
- Recommending to the WELS Regulator that a brief of evidence be provided to the Commonwealth Director of Public Prosecutions (DPP) for further action.

7. Will you be involved if an investigation is conducted?

Your information may not necessarily result in an investigation. If it does, you should be aware that investigators will contact you if it is necessary to obtain further details or to clarify elements of your allegation.

If necessary, investigators may request a witness statement from you for the purposes of:

- Recording the evidence that a witness is capable of giving at a court hearing;
- Helping to determine whether one or more offences have been committed and what action, if any, should be taken;
- Forming part of a brief to the Commonwealth Director of Public Prosecutions;
- Assisting the prosecutor in court;
- Being used by you as reference material, should you be a witness at a later date; and
- Possibly being put forward in court (for example sometimes it may be acceptable for a statement to be put before the Court instead of the witness giving evidence).

A witness statement may be sought/taken from you if you are able to give evidence relevant to the alleged offence. Statements are not only taken in order to prove an offence, but also to show that a person is not guilty of an offence.

8. Disclosure of your identity

WELS inspectors and the Regulator ensure, as far as possible, that all information received, including its source, is treated confidentially.

However, in some cases it is not possible to pursue a matter or refer it to another agency without identifying the person who reported the issue. For this reason you are asked to indicate whether you consent to your identity being disclosed to another agency when you provide information to us.

You can provide information anonymously. However, this *will* mean that you cannot be contacted to obtain further details, or to confirm passing on information about the source of the allegation to another agency/authority (should that be necessary). This may limit the WELS Regulator's ability to deal with the allegation. If an investigation cannot substantiate an allegation the matter will be closed. Therefore, we consider that it is important that people provide their name, address and telephone number so that they can be contacted if further details are needed.

9. Will you find out what happens to the information you provide?

We will confirm the receipt of your information in writing providing that we can contact you. However, you should not necessarily expect any further correspondence or to be informed directly of the results of any action on the matter you raise. Investigations are confidential. Nevertheless, if an investigation leads to prosecution, this may be the subject of some public and official reporting.

Your information may be kept as part of our knowledge base to assist with other compliance risk management or may be used to improve the WELS Scheme.

Where to send allegations

You can telephone, e-mail, post or fax your report of a possible offence to the WELS Regulator.

- Postal address is WELS Regulator, GPO Box 787, CANBERRA, ACT, 2601
- Fax number is 02 6274 1640
- Email wels@environment.gov.au
- Phone Contact 1800 803 772

10. Participation in WELS CRM continual improvement

This document is a working document. We welcome input from suppliers and the Australian community. This document is expected to develop as a result of:

- Ongoing observations and assessment by WELS officials when monitoring and conducting other Compliance Risk Management (CRM) activities;
- Feedback from suppliers as a result of WELS monitoring and other WELS CRM activities;
- Annual review by WELS officials, the WELS Advisory Committee and the WELS Regulator; and
- Independent review of regulatory arrangements under the WELS Act after five years.

We encourage your participation in WELS CRM continual improvement to maintain or improve the efficiency and cost-effectiveness of the scheme over time.

We recognise that suppliers who work towards better compliance performance and the effectiveness of the WELS CRM procedures enhance:

- the cost-effectiveness of the WELS Scheme for participants; and
- the success of the scheme, which aims to save valuable water for Australians and the environment.