

# ENFORCEABLE UNDERTAKING

*Water Efficiency Labelling and Standards Act 2005*

## Section 42

Undertaking to the Regulator given for the purposes of section 42 of the  
*Water Efficiency Labelling and Standards Act 2005*

by

Bretts Pty Ltd

ACN: 009 658 315

### Glossary

1. In this Undertaking (including the annexures to this Undertaking), unless the contrary intention appears, the following definitions apply:

"**Act**" means the *Water Efficiency Labelling and Standards Act 2005*.

"**Bretts**" means Bretts Pty Ltd (ACN: 009 658 315) the registered office of which is currently Windsor, in the state of QLD.

"**Bretts website**" means any website Bretts uses to advertise WELS products or to promote its services relating to WELS products.

"**business relationship**" means the engagement in trade or commerce between two or more persons.

"**candidate**" means an individual proposed by Bretts Pty Ltd to undertake the role of an Independent Auditor.

"**Department**" means the Department of Sustainability, Environment, Water, Population and Communities.

"**Determination**" means the *Water Efficiency Labelling and Standards Determination 2007*.

"**Identifying information**" in relation to a WELS product means the brand, licence number, model name and/or model number under which the product has been registered.

"**Independent Auditor**" means a person selected in accordance with Annexure C to this Undertaking to fulfil the functions and duties set out in Annexure C to this Undertaking.

"**Initial Audit**" means the audit Bretts undertakes to conduct described in paragraph 21 of this Undertaking.

"**normal business hours**" in relation to a Retail Store means the hours during which the Retail Store is open to the public.

"**Products**" means the products supplied by Bretts at a Retail Store which fall into a category of product listed under paragraph 4 of this Undertaking.

"**Registered**" means registered under the WELS standard.

"**Registration number**" means the number allocated to a WELS product by the Department in consequence of that product being registered under the WELS standard.

"**Regulator**" means the Regulator as defined by section 21 of the Act.

"**Retail Store**" means the store located at 142 Newmarket Road, Windsor in the state of Queensland operated by Bretts which engages in trade or commerce in Australia with respect to the supply to the public of WELS products. If during the term of this Undertaking, Bretts ceases to operate a store of the kind just described at the said premises, and Bretts commences operating a store engaged in trade or commerce of the same kind at another premise or other premises, such other store(s) are taken to be Retail Store/s for the purpose of this Undertaking.

"**Supply**" means supply for consideration or offer to supply for consideration.

"**WELS inspector**" means an inspector appointed under section 45 of the Act.

"**WELS-labelled**" has the same meaning as that which is set out in section 20 of the Act.

"**WELS premises**" has the same meaning as that which is set out in section 7 of the Act.

"**WELS product**" means a product to which the WELS standard applies.

"**WELS standard**" means *AS/NZS 6400:2005 (incorporating Amendment Nos. 1 and 2) Australian/New Zealand Standard Water Efficient products - Rating and labelling - Reissued incorporating Amendment No. 3 dated 29 January 2007) as at 14 February 2007.*

### **Person giving undertaking**

2. This undertaking is given to the Regulator by Bretts Pty Ltd for the purposes of section 42 of the Act.

### **Background**

3. Bretts, a duly incorporated company, is engaged in trade or commerce in Australia with respect to the supply of bathroom and kitchen fixtures and fittings and the sale of lighting and door hardware.
4. Bretts owns and operates a retail store in the state of Queensland (hereafter, referred to as the **Retail Store**). Bretts primary business at the Retail Store is the supply to the public of bathroom and kitchen fixtures and fittings. In particular, Bretts offers for supply to the public the following categories of products:
  - a. tap equipment;
  - b. showers; and
  - c. lavatory equipment.

5. The products supplied by Bretts at the Retail Store which fall into a category of product listed under paragraph 4 will hereafter be referred to as the **Products**.
6. Bretts displays the Products for supply at the Retail Store which is accessible by the public. Customers are able to examine the Products supplied at the Retail Store and purchase them from Bretts.
7. Bretts supplies the Products as new products.

#### **The Act and the WELS standard**

8. Pursuant to the Act and the WELS standard, the Products are **WELS products**, in that they are products to which the WELS standard applies.
9. The WELS standard requires WELS products, to, among other things, be registered and WELS-labelled for the purpose of particular supplies.
10. Section 33 of the Act provides that it is an offence for a person to supply a WELS product which is not registered but which the WELS standard requires to be registered for the purpose of the supply.
11. Section 34 of the Act provides that it is an offence for a person to supply a registered WELS product which is not WELS-labelled but which the WELS standard requires to be WELS-labelled for the purpose of the supply.
12. Section 38 of the Act provides that it is an offence for a person to supply a registered WELS product with a WELS label that is inconsistent with the information contained in the applicable WELS standard for the product.

#### **Bretts' conduct and the Department's investigation**

13. The Department has been investigating whether Bretts has supplied WELS products in contravention of the Act. The Department's investigation has included:
  - a. an inspection at Bretts Retail Store at 142 Newmarket Road, Windsor, Queensland on 1 June 2010;
  - b. online investigations and review of the WELS Registration database by WELS inspectors;
  - c. a letter to Bretts at 142 Newmarket Road, Windsor, Queensland from the Department dated 1 July 2010, advising of the outcome of the 1 June 2010 inspection; and
  - d. a follow up inspection at Bretts Retail Store at 142 Newmarket Road, Windsor, Queensland on 19 October 2010.
  - e. further online investigations and review of the WELS Registration database by WELS inspectors;
  - f. email correspondence with Bretts suppliers of WELS products

14. The Department has concluded its investigation and the Regulator is satisfied that between June 2010 and October 2010, Bretts offered for supply at the Retail Store located at 142 Newmarket Road, Windsor, in the State of Queensland, certain taps, showers and lavatory equipment that:
  - a. were not WELS registered, contrary to section 33 of the Act, or
  - b. were not WELS labelled, contrary to section 34 of the Act, or
  - c. were WELS labelled in a manner inconsistent with the information contained in the applicable WELS standard for the product, contrary to section 38 of the Act.
15. In response to the Regulator's views, Bretts has offered to give this Undertaking to the Regulator pursuant to section 42 of the Act.
16. The Regulator is satisfied that, subject to its adherence, the Undertaking addresses, without the need for criminal proceedings to be instituted, the Regulator's concerns with respect to the conduct the subject of the Department's investigation, in that the Undertaking:
  - a. requires Bretts to implement a system of maintaining records which are necessary to Bretts complying with the WELS standard;
  - b. requires Bretts to train its staff in relation to the requirements of the WELS standard;
  - c. requires Bretts to regularly audit its holdings for the purpose of determining and ensuring its compliance with the WELS standard; and
  - d. requires Bretts to engage an independent auditor, to audit its holdings to ensure that Bretts' records and auditing practices are robust and accurate.

#### **Commencement of Undertaking**

17. This Undertaking comes into effect when:
  - a. the Undertaking is executed by Bretts; and
  - b. the Regulator accepts the undertaking so executed.

#### **Duration of Undertaking**

18. Upon the commencement of this Undertaking, Bretts undertakes to assume the obligations set out in paragraphs 19 to 40 of this Undertaking (and the annexures to this Undertaking) for a period of two years, unless this Undertaking stipulates otherwise with respect to particular obligations.

#### **Undertakings**

##### ***Compliance with the WELS standard***

19. Bretts undertakes to ensure that all WELS products it supplies at the Retail Store are:
  - a. registered in accordance with the WELS standard; and

- b. WELS-labelled in accordance with the WELS standard.
20. Bretts undertakes that it will not supply any WELS product which:
- a. is not registered in accordance with the WELS standard; or
  - b. is not WELS-labelled in accordance with the WELS standard.

#### ***Initial Audit***

21. Bretts undertakes that it will, at its own expense, and within 28 days from the commencement of this Undertaking, audit all of its holdings of WELS products at the Retail Store (hereafter referred to as the **Initial Audit**). The Initial Audit shall address the matters set out in **Annexure A** of this Undertaking.
22. Bretts further undertakes that it will, at its own expense, and within 21 days of the Initial Audit, report to the Department the results of the Initial Audit. The report must be in accordance with the requirements set out in **Annexure A** to this Undertaking.

#### ***WELS compliance records system***

23. Bretts undertakes that it will, at its own expense, and within 2 months from the commencement of this Undertaking, implement a WELS-compliance records system in accordance with the requirements set out in **Annexure B** to this Undertaking, being a records system that is designed to minimise Bretts' risk of non-compliance with the WELS standard.
24. Bretts undertakes that it will, at its own expense, inform the Regulator (or delegate of the Regulator) of its implementation of a WELS-compliance records system and provide evidence such as electronic or paper records that describe the method used and correlation of WELS registration number for the WELS products offered for supply, within 2 months from the commencement of this Undertaking.
25. Bretts undertakes that it will, at its own expense, maintain the WELS-compliance records system for the duration of this Undertaking.
26. Bretts undertakes that it will, at its own expense, provide the Department with such evidence of its implementation of a WELS-compliance records system as the Regulator (or delegate of the Regulator) reasonably requests from time to time, and within the time-frame specified by the Regulator (or delegate of the Regulator), throughout the duration of this Undertaking.

#### ***Independent audit***

27. Bretts undertakes that it will, at its own expense, cause an Independent Auditor to, within 3 months of the commencement of this Undertaking, audit its holdings of WELS products at the Retail Store (the **independent audit**).

28. The Independent Auditor will be selected in accordance with the requirements set out in **Annexure C** of this Undertaking.
29. Bretts undertakes that it will cause the independent audit to be carried out by the Independent Auditor in accordance with the requirements of **Annexure C** of this Undertaking.
30. Bretts undertakes that it will cause the findings of the Independent Auditor in relation to the independent audit to be reported to the Department in accordance with the requirements of **Annexure C** of this Undertaking.

***Bretts auditing and reporting requirements***

31. Bretts undertakes that it will, at its own expense, and within 12 months of the execution of the Undertaking, audit its holdings of WELS products at the Retail Store (the **first Bretts audit**) in accordance with the requirements of **Annexure D** to this Undertaking.
32. Bretts undertakes that it will, at its own expense, and within 18 months of the execution of the Undertaking, audit its holdings of WELS products at the Retail Store (the **second Bretts audit**) in accordance with the requirements of Annexure D to this Undertaking.
33. Bretts undertakes that it will, at its own expense, and within 14 days of conducting the first Bretts audit, report the results of that audit to the Department in accordance with the requirements set out in Annexure D to this Undertaking.
34. Bretts undertakes that it will, at its own expense, and within 14 days of conducting the second Bretts audit, report the results of that audit to the Department in accordance with the requirements set out in Annexure D to this Undertaking.

***Consent to WELS inspections***

35. Subject to paragraphs 36 to 38 of this Undertaking, Bretts consents, for the purposes of section 49 of the Act, to WELS inspectors entering the Retail Store and exercising the powers set out in subsection 49(3) of the Act.
36. A WELS inspector may only enter a Retail Store pursuant to paragraph 35 of this Undertaking during normal business hours.
37. Nothing in paragraphs 35 and 36 shall be taken as empowering a WELS inspector to do anything or exercise any power which is inconsistent with the Act.
38. Nothing in paragraphs 35 to 37 shall be taken as limiting any other powers exercisable by the WELS inspectors or the Regulator (including the Regulator's delegates) under the Act.

**Compliance training program**

39. Bretts undertakes that it will, at its own expense, and within 6 weeks from the commencement of this Undertaking, implement a compliance training program in accordance with the requirements of **Annexure E** to this Undertaking, being a program that is designed to minimise Bretts' risk of non-compliance with the WELS standard.
40. Bretts undertakes that it will, at its own expense, provide a copy of any training program document required by the Department in accordance with **Annexure E** to this Undertaking.

**Miscellaneous matters**

41. All documents and information required are to be provided to the Department under this Undertaking shall be provided to the following address:

The Director  
Water Efficiency Labelling and Standards Program  
Water Efficiency Labelling and Standards Branch  
Department of Sustainability, Environment, Water, Population and Communities  
GPO Box 787  
CANBERRA ACT 2601

Any request made by the Department to Bretts under the Undertaking shall be made by sending the request, in writing, by prepaid post to the following address:


Bretts Pty Ltd  
142 Newmarket Road  
WINDSOR QLD 4030

**Acknowledgements**

42. Bretts acknowledges:
  - a. the Department will make this Undertaking (along with the annexures to this Undertaking) publicly available, including by publishing it on the Department's website;
  - b. the Department will, from time to time, make public reference to this Undertaking and the circumstances giving rise to this Undertaking, including in news media statements, Departmental publications and other publications (including but not limited to trade or similar journals and magazines);
  - c. this undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed by**


Bretts ACN 009 658 315 by its authorised officers pursuant to s 127(1) of the *Corporations Act 2001*

  
.....  
Director *WILLIAM F NUTTING*

  
.....  
Secretary/Director *ANDREW S GORTON*

This .....<sup>st</sup> day of *JUNE* 2011

**ACCEPTED BY THE REGULATOR PURSUANT TO SECTION 42 OF THE WATER EFFICIENCY LABELLING AND STANDARDS ACT 2005.**

  
.....  
Graeme Marshall  
Assistant Secretary  
Water Efficiency Labelling and Standards Branch  
(Delegate of the WELS Regulator)

This .....<sup>9</sup> day of *June* 2011

**ANNEXURE A  
INITIAL AUDIT**

1. For the purposes of the undertaking given by Bretts at paragraph 21 of the Undertaking, Bretts, in conducting the Initial Audit, is to:
  - a. identify and record all WELS products supplied by Bretts at the Retail Store;
  - b. determine whether each WELS product supplied by Bretts at the Retail Store is registered in accordance with the WELS standard;
  - c. identify and record the registration number and identifying information for each WELS product supplied by Bretts at the Retail Store;
  - d. determine whether each WELS product supplied by Bretts at the Retail Store is WELS-labelled in accordance with the WELS standard.
  
2. For the purpose of the undertaking given by Bretts at paragraph 22 of the Undertaking, the report of the Initial Audit is to include the following information in respect of each WELS product supplied by Bretts at the Retail Store:
  - a. the brand name and model number used by Bretts to identify the product;
  - b. the name and model number used by the manufacturer of the product to identify the product;
  - c. the registration number and identifying information for the product;
  - d. digital photographs of the product;
  - e. a digital photograph of the product being displayed for supply in the Retail Store with the required WELS-labelling in accordance with the WELS standard; and
  - f. WELS label details including the WELS licence number, WELS star rating, and water consumption rate/s.
  
3. For the purpose of paragraph 2.d of this Annexure, the digital photographs Bretts is required to include in the report of the Initial Audit must clearly depict each WELS product from the front, the back, both sides and above in such a way that the product's features are easily and clearly discernable.
  
4. The information in the report of the Initial Audit referred to in paragraphs 2.a to 2.c of this Annexure is to be provided to the Department in writing (this may be in the form of a Microsoft Word document or Microsoft Excel spreadsheet).
  
5. The digital photographs referred to at paragraphs 2.d and 2.e of this Annexure is to be provided to the Department on a compact disc.

**ANNEXURE B**  
**WELS COMPLIANCE RECORDS SYSTEM**

1. For the purposes of the undertakings given by Bretts at paragraphs 23 and 24 of the Undertaking, in implementing and maintaining the WELS-compliance records system, Bretts must:
  - a. maintain clear and up-to-date records of:
    - (i) all WELS products supplied Bretts at the Retail Store (including the name(s) and model number(s) used by Bretts and the manufacturer of the product to identify the product); and
    - (ii) the registration number and identifying information for all WELS products supplied by Bretts at the Retail Store; and
  - b. maintain digital photographs of each WELS product supplied by Bretts at the Retail Store.
2. For the purpose of paragraph 1.b of this Annexure, the digital photographs Bretts is required to maintain of each WELS product must clearly depict the product from the front, the back, both sides and above in such a way that the product's features are easily and clearly discernable. These photographs are required to be captured and maintained in the WELS-compliance records system.
3. Bretts shall implement promptly and with due diligence any recommendations made by the Department that are reasonably necessary to ensure that Bretts' WELS-compliance records system accurately records all information required under this Annexure.

**ANNEXURE C  
INDEPENDENT AUDIT**

1. For the purposes of paragraph 28 of the Undertaking, the Independent Auditor shall be selected in accordance with the following terms:
  - a. the candidate shall be selected by Bretts;
  - b. the candidate shall be independent of Bretts, within the meaning of paragraph 2 of this Annexure; and
  - c. the candidate shall complete a declaration in accordance with paragraph 3 of this Annexure.
  
2. For the purpose of paragraph 1.a of this Annexure, a candidate is independent of Bretts if all of the following criteria are satisfied:
  - a. the candidate is not and has never been employed by Bretts;
  - b. the candidate does not have and has never had a business relationship with Bretts (excluding a business relationship constituted by the engagement of the candidate by Bretts to carry out the functions of an Independent Auditor for the purposes of the Undertaking); and
  - c. the candidate has no shareholding or other interest in Bretts.
  
3. For the purposes of paragraph 1.c of this Annexure, the candidate shall, prior to being appointed an Independent Auditor for the purposes of the Undertaking, make a written declaration, signed by the candidate, as to the matters set out in paragraph 2.a to 2.c of this Annexure.
  
4. Prior to the Independent Auditor carrying out an audit for the purposes of this Annexure, Bretts shall provide to the Department a copy of the written declaration referred to at paragraph 3 of this Annexure.
  
5. For the purposes of paragraph 29 of the Undertaking, in carrying out the independent audit, the Independent Auditor(s) will:
  - a. identify and record all WELS products supplied by Bretts at the Retail Store;
  - b. determine whether each WELS product supplied by Bretts at the Retail Store is registered in accordance with the WELS standard; and
  - c. determine whether each WELS product supplied by Bretts at the Retail Store is WELS-labelled in accordance with the WELS standard.
  
6. For the purposes of paragraph 30 of the Undertaking, the Independent Auditor shall, within 14 days of completing the independent audit, report to the Department the results of that audit. The report of the independent audit shall include the following information in respect of each WELS product supplied for consideration or offered to supply for consideration by Bretts at the Retail Store:

- a. the brand name and model number used by Bretts to identify the product;
  - b. whether each product is registered in accordance with the WELS standard and, if so, identify the registration number and identifying information for the product;
  - c. whether each product is WELS-labelled in accordance with the WELS standard; and
  - d. the product's WELS label details including the WELS licence number, WELS star rating, and water consumption rate/s.
7. The information in the reports referred to in paragraphs 6.a to 6.d of this Annexure is to be provided to the Department in writing (this may be in the form of a Microsoft Word document or Microsoft Excel spreadsheet).

**ANNEXURE D**  
**BRETTS AUDITING AND REPORTING REQUIREMENTS**

1. For the purposes of the undertaking given by Bretts at paragraphs 31 and 32 of the Undertaking, Bretts shall, in conducting the first Bretts audit and the second Bretts audit:
  - a. identify and record all WELS products supplied by Bretts at the Retail Store;
  - b. determine whether each WELS product supplied by Bretts at each Retail Store is registered in accordance with the WELS standard;
  - c. determine whether each WELS product supplied by Bretts at each Retail Store is WELS-labelled in accordance with the WELS standard; and
2. For the purposes of the undertaking given by Bretts at paragraphs 33 and 34 of the Undertaking, the reports of the first Bretts audit and the second Bretts audit are to include the following information in respect of each WELS product supplied or offered for supply by Bretts at the Retail Store:
  - a. the name and model number used by Bretts to identify the product;
  - b. the name and model number used by the manufacturer of the product to identify the product;
  - c. the registration number and identifying information for the product;
  - d. digital photographs of the product;
  - e. a digital photograph of the product being displayed for supply in the Retail Store with the required WELS-labelling in accordance with the WELS standard; and
  - f. the product's WELS label details including the WELS star rating, and water consumption rate.
3. For the purpose of paragraph 2.d of this Annexure, the digital photographs Bretts is required to include in the report of the Initial and Second Audit must clearly depict each WELS product from the front, the back, both sides and above in such a way that the product's features are easily and clearly discernable.
4. The information in the reports referred to in paragraphs 2.a to 2.c of this Annexure is to be provided to the Department in writing (this may be in the form of a Microsoft Word document or Microsoft Excel spreadsheet).
5. The digital photographs referred to at paragraphs 2.d and 2.e of this Annexure is to be provided to the Department on a compact disc.

**ANNEXURE E**  
**COMPLIANCE TRAINING PROGRAM**

1. For the purposes of the undertaking given by Bretts at paragraph 39 of the Undertaking, the compliance training program Bretts is required to implement shall be in accordance with the following terms:
  - a. the compliance training program must be completed by persons who are employed by Bretts (whether on a full-time, part-time or casual basis or by virtue of any other arrangement) and whose duties include:
    - (i) the supply of WELS products; or
    - (ii) the labelling, presenting or displaying of WELS; or
    - (iii) the purchasing, ordering or importing of WELS products.
  - b. persons who are required to complete the compliance training program by virtue of paragraph 1.a of this Annexure, must do so:
    - (i) within 6 weeks of the commencement of the Undertaking; or
    - (ii) within 21 days of becoming a person who is required to complete the compliance training program,  
whichever is later.
  - c. the compliance training program must address the following topics:
    - (i) what is a WELS product;
    - (ii) the requirement for WELS products to be registered under the WELS standard;
    - (iii) the requirement for WELS products to be WELS-labelled under the WELS standard;
    - (iv) how to obtain a WELS labels for WELS products;
    - (v) how to position and/or attach a WELS label to each category of WELS product in accordance with the WELS standard;
    - (vi) the consequences of non-compliance with the requirements of the WELS standard and the Act (including the commission of criminal offences); and
    - (vii) the procedure Bretts staff members should follow if they consider that Bretts may be non-compliant with the WELS standard.
  - d. for the purposes of paragraph 1.c (vii) of this Annexure, Bretts shall identify a compliance officer within Bretts' executive to deal with issues raised by staff members regarding Bretts' possible non-compliance with the WELS standards.
  - e. prior to implementing the compliance training program, Bretts shall, at its own expense, provide to the Department any materials it intends to use in administering the compliance training program as described in paragraph 1.c of this Annexure.

- f. Bretts shall implement promptly and with due diligence any recommendations made by the Department that are reasonably necessary to ensure that the compliance training program accurately and relevantly explains the operation, application and requirements of the Act and the WELS standards.
- g. Bretts shall cause each person who has completed the compliance training program to, within 14 days of completing the program, sign a written declaration stating that the person has completed the program and that the program addressed the topics set out in paragraph 1.c of this Annexure.
- h. Bretts shall, at its own expense, provide to the Department a copy of each declaration made pursuant to paragraph 1.g of this Annexure within 14 days of the making of the declaration.

