

# 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

Kaddle Pty Ltd, ACN 009 110 114

Trading as: Clever Bathrooms, WA BN11200030

## 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*.

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

"**candidate**" means an individual proposed by Clever Bathrooms to undertake the role of an Independent Auditor.

"**Clever Bathrooms**" means Kaddle Pty Ltd, (ACN 009 110 114) trading as Clever Bathrooms (WA BN11200030)

"**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 Audit**" means the audit the Independent Auditor will conduct described in paragraph 216 of this Undertaking.

"**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 Internal Audit**" means the audit Clever Bathrooms 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 Clever Bathrooms 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 9/27 Exhibition Drive, MALAGA, WA 6090, operated by Clever Bathrooms 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, Clever Bathrooms ceases to operate a store of the kind just described at the said premises, and Clever Bathrooms 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 Kaddle Pty Ltd, ACN 009 110 114 (Trading as: Clever Bathrooms WA BN11200030) for the purposes of section 42 of the Act.

### **Background**

3. Clever Bathrooms is engaged in trade or commerce in Australia with respect to the supply of WELS products.
4. Clever Bathrooms owns and operates a retail store in the state of Western Australia (hereafter, referred to as the **Retail Store**). Clever Bathrooms business at the Retail Store includes the supply to the public of bathroom and kitchen fixtures and fittings. In particular, Clever Bathrooms 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 Clever Bathrooms at the Retail Store which fall into a category of product listed under paragraph 4 will hereafter be referred to as the **Products**.
6. Clever Bathrooms 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 Clever Bathrooms.
7. Clever Bathrooms 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.

#### **Clever Bathrooms conduct and the Department's investigation**

12. The Department has been investigating whether Clever Bathrooms has supplied WELS products in contravention of the Act. The Department's investigation has included:
  - a. an inspection at Clever Bathrooms Retail Store at 9/27 Exhibition Drive, MALAGA, WA 6090, on 27 April 2010;
  - b. online investigations and review of the WELS Registration database by WELS inspectors;
  - c. a letter to Clever Bathrooms at 9/27 Exhibition Drive, MALAGA, WA 6090, from the Department dated 18 May 2010, advising of the outcome of the 27 April 2010 inspection;
  - d. a follow up inspection at Clever Bathrooms Retail Store at 9/27 Exhibition Drive, MALAGA, WA 6090, on 17 January 2011 and;
  - e. further online investigations and review of the WELS Registration database by WELS inspectors.
13. The Department has concluded its investigation and the Regulator is satisfied that between April 2010 and January 2011, Clever Bathrooms offered for supply at the

Retail Store located at 9/27 Exhibition Drive, MALAGA 6090, in the State of Western Australia, certain taps and showers 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
14. The Regulator considers and Clever Bathrooms acknowledges that a number of other supplies by Clever Bathrooms may also have been in contravention of:
- a. section 33 of the Act in that the WELS product was not registered at the time of supply; or
  - b. section 34 of the Act in that the WELS product was registered but was not WELS-labelled at the time of supply
15. In response to the Regulator's views, Clever Bathrooms 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 Clever Bathrooms to implement a system of maintaining records which are necessary to Clever Bathrooms complying with the WELS standard;
  - b. requires Clever Bathrooms to train its staff in relation to the requirements of the WELS standard;
  - c. requires Clever Bathrooms to regularly audit its holdings for the purpose of determining and ensuring its compliance with the WELS standard; and
  - d. requires Clever Bathrooms to engage an Independent Auditor, to audit its holdings to ensure that Clever Bathrooms records and auditing practices are robust and accurate.

#### **Commencement of Undertaking**

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

#### **Duration of Undertaking**

18. Upon the commencement of this Undertaking, Clever Bathrooms undertakes to assume the obligations set out in paragraphs 19 to 41 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. Clever Bathrooms 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. Clever Bathrooms 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 Internal Audit***

21. Clever Bathrooms 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 Internal Audit**). The Initial Internal Audit shall address the matters set out in **Annexure A** of this Undertaking.
22. Clever Bathrooms further undertakes that it will, at its own expense, and within 14 days of the Initial Internal Audit, report to the Department the results of the Initial Internal Audit. The report must be in accordance with the requirements set out in **Annexure A** to this Undertaking.

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

23. Clever Bathrooms 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 Clever Bathrooms risk of non-compliance with the WELS standard.
24. Clever Bathrooms 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 of this, within 2 months from the commencement of this Undertaking.
25. Clever Bathrooms undertakes that it will, at its own expense, maintain the WELS compliance records system for the duration of this Undertaking.
26. Clever Bathrooms 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. Clever Bathrooms 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. Clever Bathrooms 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. Clever Bathrooms 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.

### ***Reporting of new WELS products***

31. The undertaking set out at paragraph 32 below applies to WELS products which:
  - a. Clever Bathrooms intends to sell or offer for sale; and
  - b. have not been included in a report provided to the Department under this Undertaking.
32. Clever Bathrooms undertakes that it will, at its own expense, and before selling or offering for sale the WELS product, provide to the Department a report in accordance with the requirements of **Annexure D** to this Undertaking.

### ***Consent to WELS inspections***

33. Subject to paragraphs 34 to 36 of this Undertaking, Clever Bathrooms 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.
34. A WELS inspector may only enter a Retail Store pursuant to paragraph 33 of this Undertaking during normal business hours.
35. Nothing in paragraphs 33 and 34 shall be taken as empowering a WELS inspector to do anything or exercise any power which is inconsistent with the Act.
36. Nothing in paragraphs 33 to 35 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***

37. Clever Bathrooms 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 Clever Bathrooms risk of non-compliance with the WELS standard.

38. Clever Bathrooms 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.

***Notice published by the Department***

39. Clever Bathrooms acknowledges that the Department will make this Undertaking (along with the annexures to this Undertaking) publicly available, by publishing it on the Department's website.

**Miscellaneous matters**

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

The Director  
WELS Program Section  
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 Clever Bathrooms under the Undertaking shall be made by sending the request, in writing, by prepaid post to the following address:

Kaddle Pty Ltd  
11 Excellence Drive,  
WANGARA WA 6065

**Acknowledgements**

41. Clever Bathrooms 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.

SIGNED by Kaddle Pty Ltd, ACN 009 110  
114 in accordance with section 127(1) of  
the Corporations Act 2001 (Cth) by

STANISLAW H MANIA  
Name of Sole Director (print)

[Signature]  
Signature of Sole Director

29/9/2011  
Date

Shavon Daly  
Name of witness (print)

[Signature]  
Signature of witness

29-9-11  
Date

SIGNED for and on behalf of the  
**COMMONWEALTH OF AUSTRALIA**  
represented by the Department of  
**Sustainability, Environment, Water,  
Population and Communities** by a duly  
authorised representative

Graeme Marshall  
Name of authorised representative (print)

[Signature]  
Signature of authorised representative

13 October 2011  
Date

LYN CHAPMAN  
Name of witness (print)

[Signature]  
Signature of witness

13 October 2011  
Date

**ANNEXURE A**  
**INITIAL INTERNAL AUDIT**

1. For the purposes of the undertaking given by Clever Bathrooms at paragraph 21 of the Undertaking, Clever Bathrooms , in conducting the Initial Internal Audit, is to:
  - a. identify and record all WELS products supplied by Clever Bathrooms at the Retail Store;
  - b. determine whether each WELS product supplied by Clever Bathrooms 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 Clever Bathrooms at the Retail Store;
  - d. determine whether each WELS product supplied by Clever Bathrooms at the Retail Store is WELS-labelled in accordance with the WELS standard.
  
2. For the purpose of the undertaking given by Clever Bathrooms at paragraph 22 of the Undertaking, the report of the Initial Internal Audit is to include the following information in respect of each WELS product supplied by Clever Bathrooms at the Retail Store:
  - a. the brand name and model number used by Clever Bathrooms 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 Clever Bathrooms is required to include in the report of the Initial Internal 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 Internal 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 Clever Bathrooms at paragraphs 23 and 24 of the Undertaking, in implementing and maintaining the WELS-compliance records system, Clever Bathrooms must:
  - a. maintain clear and up-to-date records of:
    - (i) all WELS products supplied by Clever Bathrooms at the Retail Store (including the name(s) and model number(s) used by Clever Bathrooms and the manufacturer of the product to identify the product); and
    - (ii) the registration number and identifying information for all WELS products supplied by Clever Bathrooms at the Retail Store; and
  - b. maintain digital photographs of each WELS product supplied by Clever Bathrooms at the Retail Store.
2. For the purpose of paragraph 1.b of this Annexure, the digital photographs Clever Bathrooms 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. Clever Bathrooms shall implement promptly and with due diligence any recommendations made by the Department that are reasonably necessary to ensure that Clever Bathrooms 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 Clever Bathrooms;
  - b. the candidate shall be independent of Clever Bathrooms, 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 Clever Bathrooms if all of the following criteria are satisfied:
  - a. the candidate is not and has never been employed by Clever Bathrooms;
  - b. the candidate does not have and has never had a business relationship with Clever Bathrooms (excluding a business relationship constituted by the engagement of the candidate by Clever Bathrooms 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 Clever Bathrooms.
  
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, Clever Bathrooms 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 Clever Bathrooms at the Retail Store;
  - b. determine whether each WELS product supplied by Clever Bathrooms at the Retail Store is registered in accordance with the WELS standard; and
  - c. determine whether each WELS product supplied by Clever Bathrooms 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 Clever Bathrooms at the Retail Store:

- a. the brand name and model number used by Clever Bathrooms 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.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).

**ANNEXURE D**  
**REPORTING OF NEW WELS PRODUCTS**

1. For the purposes of the undertaking given by Clever Bathrooms at paragraph 32 of the Undertaking, the report Clever Bathrooms is required to provide to the Department shall include the following information in respect of the relevant WELS product:
  - a. the name and model number used by Clever Bathrooms 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; and
  - e. WELS label details including the WELS star rating, and water consumption rate/s.
  
2. For the purpose of paragraph 4 of this Annexure, the digital photographs to be included in the report referred to in paragraph 1.c of this Annexure must:
  - a. clearly depict the WELS product and label in such a way that the product's features are easily and clearly discernable; and
  - b. show the label in such a way that the photo quality and resolution clearly displays the text.
  
3. The information in the reports referred to in paragraphs 1.a to 1.c and 1.e 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).
  
4. The digital photographs referred to at paragraph 1.d of this Annexure are to be provided to the Department on a compact disc.

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

1. For the purposes of the undertaking given by Clever Bathrooms at paragraph 37 of the Undertaking, the compliance training program Clever Bathrooms 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 Clever Bathrooms (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 Clever Bathrooms staff members should follow if they consider that Clever Bathrooms may be non-compliant with the WELS standard.
  - d. for the purposes of paragraph 1.c (vii) of this Annexure, Clever Bathrooms shall identify a compliance officer within Clever Bathrooms executive to deal with issues raised by staff members regarding Clever Bathrooms possible non-compliance with the WELS standards.
  - e. prior to implementing the compliance training program, Clever Bathrooms 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. Clever Bathrooms 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. Clever Bathrooms 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. Clever Bathrooms 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.

A copy of the Act as well as other information about WELS can be accessed from the WELS website; [www.waterrating.gov.au](http://www.waterrating.gov.au)