

WATER EFFICIENCY LABELLING AND STANDARDS AGREEMENT

**AGREEMENT in relation to Water Efficiency Labelling and Standards
between**

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF WESTERN AUSTRALIA;

The STATE OF QUEENSLAND;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The NORTHERN TERRITORY OF AUSTRALIA;

The AUSTRALIAN CAPITAL TERRITORY

(collectively called 'the States and Territories').

CONTENTS

DATE	1
PARTIES	1
CONTEXT	1
1 INTERPRETATION	2
2 TERM OF AGREEMENT	3
3 LEGAL EFFECT OF AGREEMENT	3
4 NATIONAL WATER EFFICIENCY LABELLING AND STANDARDS LEGISLATION	3
5 MAINTENANCE OF CONSISTENT SCHEME	5
6 WATER EFFICIENCY LABELLING AND STANDARDS ADVISORY COMMITTEE	6
7 FUNDING ARRANGEMENTS	7
8 INFORMATION	8
9 REVIEW	8
10 VARIATION	9
11 WITHDRAWAL AND TERMINATION	9
12 DISPUTE RESOLUTION	10

SIGNATURES

DATE

This AGREEMENT is dated 18 March 2005.

PARTIES

This AGREEMENT is made between the following parties:

1. The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and
 2. The STATE OF NEW SOUTH WALES;
 3. The STATE OF VICTORIA;
 4. The STATE OF WESTERN AUSTRALIA;
 5. The STATE OF QUEENSLAND;
 6. The STATE OF SOUTH AUSTRALIA;
 7. The STATE OF TASMANIA;
 8. The NORTHERN TERRITORY OF AUSTRALIA; and
 9. The AUSTRALIAN CAPITAL TERRITORY
- (collectively called 'the States and Territories').

CONTEXT

This Agreement is made in the following context:

- A Recognising the need to identify new means of conserving water, the Parties have agreed that legislation should be introduced for water efficiency labelling and standards, including minimum standards.
- B The Commonwealth and the States and Territories agree that the legislative scheme should be nationally consistent, drawing on legislative power conferred by the Commonwealth, State and Territory Parliaments.
- C In the interests of implementing an efficient and effective regulatory system for mandatory water efficiency labelling and standards, including minimum standards, the Commonwealth and the States and Territories have agreed

that the national legislative scheme should be administered on a cooperative basis.

1 INTERPRETATION

1.1 Defined terms

1.1.1 In this Agreement, unless the contrary intention appears:

Agreement	means this document and includes any schedules and annexures;
Commonwealth Act	means the <i>Water Efficiency Labelling and Standards Act 2004</i> of the Commonwealth;
Legislation	includes regulations and other subordinate instruments;
Minister	means the Australian Government Minister for the Environment and Heritage;
Party	means a party to this Agreement;
Regulator	Means the Secretary of the Department of State of the Commonwealth that deals with the matters to which the Commonwealth Act relates; <i>[Note – as defined in Section 21 of the Commonwealth Act (by reference to Section 7).]</i>
Scheme	means the totality of the legislation enacted by the Parties in relation to mandatory water efficiency labelling and standards, including minimum standards, in accordance with this Agreement;
State	does not include the Australian Capital Territory or the Northern Territory of Australia;
Territory	refers to the Australian Capital Territory and the Northern Territory of Australia but does not include external Territories.

1.2 Interpretation

1.2.1 Expressions used in this Agreement have the same meaning as in the Commonwealth Act.

2 TERM OF AGREEMENT

2.1 Commencement date

- 2.1.1 This Agreement commences upon execution by the Commonwealth and two other Parties, including at least one State, and continues until it is terminated in accordance with clause 11.2.

3 LEGAL EFFECT OF AGREEMENT

3.1 Agreement not legally binding

- 3.1.1 This Agreement is not intended to be, and is not, a legally binding or enforceable document.
- 3.1.2 Notwithstanding clause 3.1.1, the Parties will act and cooperate in good faith in accordance with the terms of this Agreement.

4 NATIONAL WATER EFFICIENCY LABELLING AND STANDARDS LEGISLATION

4.1 Commonwealth Act

- 4.1.1 The Commonwealth will use its best endeavours to ensure that the Commonwealth Act will, amongst other things:
- a. provide for the appointment of a Water Efficiency Labelling and Standards Regulator (the Regulator) with functions including overseeing the administration of the Scheme, ensuring compliance and enforcement, and providing information and advice to the Minister, to State and Territory Ministers and to the public;
 - b. prohibit the sale of prescribed water-use and water-saving products (WELS products) unless the products are registered in accordance with the relevant WELS standard and comply with the water efficiency labelling, minimum water efficiency and general performance requirements of the relevant WELS standard;
 - c. provide that the WELS products and any water efficiency standards will be determined by the Minister, subject to agreement to the terms of each determination from a majority of the participating States and Territories;
 - d. not preclude the operation of any State or Territory law that is capable of operating concurrently with the Commonwealth Act;

- e. provide for an adequate compliance and enforcement regime; and
- f. provide for corresponding State-Territory laws to confer functions or powers, or impose duties, on the Regulator and inspectors appointed under the Commonwealth Act, to the extent permitted constitutionally and in accordance with agreements between the Commonwealth and the relevant States or Territories.

4.2 State and Territory legislation

4.2.1 Each State or Territory government will submit to its Parliament as soon as possible a Bill or Bills to form part of the Scheme in order to ensure that the Scheme applies consistently to all persons, things and activities within Australia. Each State and Territory government will use its best endeavours to secure the passage of the Bill or Bills submitted to its Parliament, as introduced, and commencement of the Act(s) by June 2005.

4.2.2 The Bill or Bills referred to in clause 4.2.1 will, amongst other things:

- a. confer functions and powers on the Regulator in the same terms as those specified in the Commonwealth Act;
- b. provide for the Regulator to delegate powers and functions under the Commonwealth Act to officers and employees of agencies of the relevant State or Territory, with the prior agreement of the relevant State or Territory;
- c. prohibit the sale of prescribed water-use and water-saving products unless the products are registered in accordance with the relevant WELS standard and comply with the water efficiency labelling, minimum water efficiency and general performance requirements of the relevant WELS standard; and
- d. in relation to offences,
 - i. in the case of Territory Bills, reference the *Criminal Code*;
 - ii. in the case of State Bills, provide for an outcome equivalent to references in the Commonwealth Act to the Criminal Code, where appropriate.

5 MAINTENANCE OF CONSISTENT SCHEME

5.1 Legislation to be nationally consistent

5.1.1 The Commonwealth and the States and Territories will use their best endeavours to ensure that all legislation forming part of the Scheme will remain nationally consistent. This is to:

- make registration as easy as possible for businesses; the affected industry operates in national and global markets and it will be simpler for international businesses and Australian businesses operating in more than one State or Territory to have a single registration point for their products;
- minimise compliance costs for industry and thereby encourage compliance with the scheme; and
- comply with mutual recognition principles as adopted in the *Mutual Recognition Act 1992* and the *Trans Tasman Mutual Recognition Arrangement*.

5.1.2 The Commonwealth will inform the other Parties of changes to the monetary value of Penalty Units as soon as practicable, and the other Parties will use their best endeavours to maintain parity with the value of these Penalty Units in their own penalty regimes for the Scheme.

5.2 Amending and new legislation

5.2.1 If a Party proposes to amend legislation forming part of the Scheme, that Party will submit the proposed amendments to the other Parties for consideration at least 6 months prior to introducing the amendments, or within a reasonable time where it is necessary to act more quickly.

5.2.2 If a Party proposes to introduce legislation or amend existing legislation that may affect the Scheme, that Party will give written notice to the other Parties of the effect of the legislative proposals on the Scheme at least 6 months prior to introducing or amending the legislation, or within a reasonable time where it is necessary to act more quickly.

5.3 Determinations under the Commonwealth Act

5.3.1 Subject to clause 4.1.1.(c), if the Minister proposes to make a determination under the Commonwealth Act, the Minister will give written notice to the other Parties of the effect of the proposed determination on the Scheme at least 6 months prior to making the determination, or within a reasonable time where it is necessary to act more quickly.

6 WATER EFFICIENCY LABELLING AND STANDARDS ADVISORY COMMITTEE

6.1 Establishment of the Committee

- 6.1.1 For the purposes of the Scheme, there will be an advisory Committee known as the Water Efficiency Labelling and Standards Advisory Committee (the Committee).
- 6.1.2 The Committee will consist of one representative of each Party and be chaired by the Commonwealth representative.
- 6.1.3 The Committee may resolve to invite others, such as representatives from industry, consumer and environmental groups, to attend and participate in a meeting of the Committee as observers.

6.2 Functions of the Committee

6.2.1 The functions of the Committee are to:

- a. oversee the implementation of the Scheme;
- b. provide a forum for consultation between the Parties;
- c. provide advice to the Regulator or the Minister or any relevant ministerial council on:
 - i. products to be prescribed for the purposes of the Scheme;
 - ii. the WELS standards to be prescribed for the purposes of the Scheme, including any labelling, minimum water efficiency and general performance requirements;
 - iii. national strategies for effective compliance and enforcement;
 - iv. the co-ordination of State, Territory and Commonwealth resources in relation to the administration and enforcement of the Scheme;
 - v. the administration of the Scheme generally; and
 - vi. related water policy and other related matters;
- d. perform any other function conferred on the Committee by this Agreement.

6.2.2 The Committee will develop the following on an annual basis for the consideration of the Regulator in relation to the Scheme:

- a. an annual work plan;
- b. a compliance and enforcement plan; and
- c. a budget plan.

6.3 Proceedings of the Committee

- 6.3.1 The Committee will meet approximately every six months or at such times as it sees fit and will, subject to this Agreement, determine its own procedure.
- 6.3.2 A resolution before the Committee will be carried if, and only if, a majority of all members of the Committee vote in favour of the resolution.

7 FUNDING ARRANGEMENTS

7.1 Apportionment of funding between the Parties

- 7.1.1 The Commonwealth will provide the funds required for the establishment and operation of the regulatory system under the Scheme until 30 June 2005, or the commencement of the scheme, whichever is the earlier. The legislation will provide for possible cost recovery through the charging of application and licence fees, to the extent consistent with Commonwealth policy on cost recovery.
- 7.1.2 The Parties will provide any other funds that the Environment Protection and Heritage Council decides are required for the ongoing operation of the regulatory system under the Scheme from 1 July 2005, in accordance with the usual Environment Protection and Heritage Council formula, namely 50% Commonwealth funds and 50% from the States and Territories on a *pro rata* population basis.

7.2 Special Account

- 7.2.1 For the purposes of the Scheme, the Funds will be quarantined in a Special Account (the WELS Account, established by subsection 64(1) of the Commonwealth Act) as contemplated by section 21 of the *Financial Management and Accountability Act 1997*.
- 7.2.2 An amount corresponding to all funds contributed by the States and Territories and appropriated by the Commonwealth will be credited to the WELS Account.
- 7.2.3 Any funds not spent in a given financial year will be rolled over into the following financial year.

7.3 Use of the Funds

7.3.1 The Funds may be used for purposes in connection with furthering the objects of the Scheme, including:

- a. the establishment and continued operation of the regulatory system provided for under the Scheme;
- b. reimbursing the Parties for costs reasonably incurred in the performance of functions on behalf of the Regulator, for example compliance and enforcement activities; and
- c. making payments in connection with the performance of the Regulator's functions.

8 INFORMATION

8.1 Exchange of information between the Parties

8.1.1 The Commonwealth will provide the other Parties with access to both publicly available and, where permitted by law, confidential information held by the Regulator in connection with the administration and enforcement of the Scheme.

8.1.2 Each Party will exchange with the other Parties such information in relation to the administration of the Scheme as is necessary to facilitate:

- a. the effective and efficient operation of the scheme;
 - b. monitoring the success of the scheme; and
 - c. the functions of the Committee.
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8.1.3 The Commonwealth will provide each State and Territory member of the Committee with a copy of the annual report to be prepared by the Regulator under Section 75 of the Commonwealth Act, within 3 working days after having the report tabled in both Houses of Parliament.

9 REVIEW

9.1 Review of implementation and effectiveness

9.1.1 The Parties will review this Agreement and the Scheme concurrently with the review of the Scheme to be conducted by the Commonwealth Minister under section 76 of the Commonwealth Act. The review under section 76 of the Commonwealth Act will be conducted in consultation with the Parties.

- 9.1.2 Selection of the persons to undertake that review of the Scheme and the setting of terms of reference for that review will be undertaken in consultation with the Parties. The terms of reference will, inter alia, address the consistency between the Acts in each jurisdiction, for example in relation to penalty levels. The Parties will subsequently review this Agreement and the Scheme at intervals of no more than 5 years.
- 9.1.3 Each review will invite public submissions and be conducted in consultation with:
- a. the Regulator;
 - b. the Committee;
 - c. the Minister; and
 - d. such others, including consumer, environmental and industry groups, as the Parties considers appropriate.
- 9.1.4 If, after a review, the Parties agree that legislative amendment should be undertaken, the Parties will endeavour to implement any agreed amendments as soon as practicable, recognising the obligation under clause 5.1.1 to maintain national consistency with the Scheme.

10 VARIATION

10.1 Variation by agreement

- 10.1.1 This Agreement may be varied if each of the Parties agrees to the proposed variation in writing.

11 WITHDRAWAL AND TERMINATION

11.1 Withdrawal

- 11.1.1 A Party may withdraw from this Agreement by giving the other Parties at least 6 months notice, in writing, of its intention to withdraw from the Agreement.

11.2 Termination

- 11.2.1 This Agreement may be terminated if each of the Parties agrees to the termination in writing.

12 DISPUTE RESOLUTION

12.1 Informal resolution

- 12.1.1 The members of the Committee will negotiate to resolve a dispute that arises under this Agreement.
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12.2 Referral to Environment Protection and Heritage Council

- 12.2.1 Where the Committee is unable to resolve the dispute in accordance with clause 12.1.1, the dispute will be referred to the Environment Protection and Heritage Council for resolution.

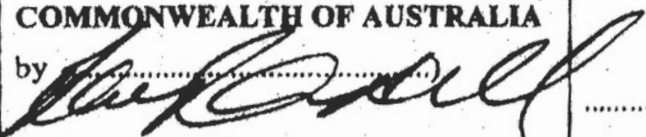
THIS AGREEMENT is made on the

day of

2005.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA

by



in the presence of

.....)

.....
.....
(Signature of Witness)

THIS AGREEMENT is made on the

day of

2005.

SIGNED for and on behalf of the
STATE OF NEW SOUTH WALES
by F. E. SARTON

in the presence of

.....)

.....
(Signature of Witness)

THIS AGREEMENT is made on the

day of

2005.

SIGNED for and on behalf of the

STATE OF VICTORIA

by JOHN THWALLES
MINISTER FOR ENVIRONMENT

in the presence of

GAVIN O'NEILL

[Signature]

[Signature]

(Signature of Witness)

THIS AGREEMENT is made on the

day of

2005.

<p>SIGNED for and on behalf of the STATE OF WESTERN AUSTRALIA by <u>JOHN KOBEZKE</u>)</p> <p>in the presence of <u>Wayne A. Radcliffe</u></p>	<p><u>John Kobelke</u></p> <p><u>Radcliffe</u></p> <p>(Signature of Witness)</p>
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THIS AGREEMENT is made on the

7th day of June 2005.

SIGNED for and on behalf of the

STATE OF QUEENSLAND

by

Desley Boyle

in the presence of

Charis Mullen

[Signature]

[Signature]

(Signature of Witness)

THIS AGREEMENT is made on the

16 day of NN 2005.

SIGNED for and on behalf of the

STATE OF SOUTH AUSTRALIA

by HON JOHN HILL MP
MINISTER FOR ENVIRONMENT
AND CONSERVATION

in the presence of

LYN MARGUERITE METCALF.)

(Signature of Witness)

THIS AGREEMENT is made on the

day of

2005.

<p>SIGNED for and on behalf of the STATE OF TASMANIA by <u><i>J. Harrison</i></u> in the presence of <u>.....</u>)</p>	<p>..... (Signature of Witness)</p>
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THIS AGREEMENT is made on the 7 day of March 2006

<p>SIGNED for and on behalf of THE NORTHERN TERRITORY OF AUSTRALIA by <u>[Signature]</u> in the presence of <u>LESLIE CAMERON</u></p>	<p>..... <u>[Signature]</u> (Signature of Witness)</p>
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THIS AGREEMENT is made on the day of 2005.

<p>SIGNED for and on behalf of THE AUSTRALIAN CAPITAL TERRITORY by <u>[Signature]</u> in the presence of <u>Colin Arman</u></p>	<p><u>[Signature]</u> (Signature of Witness)</p>
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