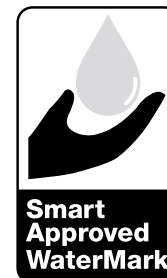


Smart Approved WaterMark

Product Application Form



1. Explanatory Notes

- 1.1 This application form must be read in conjunction with the Terms and Conditions of the Smart Approved WaterMark scheme.
- 1.2 Please complete all applicable sections on the Application Form.
- 1.3 A separate application must be completed for each Product, unless the differences are cosmetic in nature only ie colours, features and optional extras and do not affect the actual water use of the product.
- 1.4 The Application Fee is not refundable.
- 1.5 The application form and supporting material should **NOT** exceed 10 A4 pages. If more than 10 pages are submitted, only the first 10 will be considered. It is the responsibility of the applicant to supply the appropriate level of information - the applicant should assume that the Expert Panel has **NO** prior information about the product and must use the information supplied as the only source upon which to make a decision.
- 1.6 The application form and supporting material is to be sent to the Expert Panel, and their decision will take one of three forms: '**Accept**', '**Reject**' or '**Seek Further Information**'.
- 1.7 While no specific reasons for any decision by the Expert panel will be conveyed nor communicated, the Expert Panel will produce guidelines and criteria which will be published on the website to assist potential applicants.
- 1.8 The decision of the Expert Panel is final and no further correspondence will be entered into, as the deliberations of the Expert Panel are confidential.
- 1.9 An applicant, if rejected, may:
If aggrieved by the decision, appeal in writing to:
Chair, Smart Approved WaterMark Steering Committee, GPO Box 915 Sydney, NSW 2001
AND/OR
Reapply, but only where new information is supplied to support the new application and a new application fee will be payable.
- 1.10 Approved companies can use the Smart Approved WaterMark label for a period of two (2) years from the date of issue on the Certificate of Approval.
- 1.11 At least two months prior to the expiry of the Certificate of Approval, companies should reapply for a further term, otherwise a new application fee may be applied.

Note: Products currently included in the WELS (waterrating.gov.au) scheme – will NOT be considered for the Smart Approved WaterMark label.

2. Applicant Details*

Name: _____

Title: _____

Organisation: _____

ABN: _____

Type of Organisation: Educational or Not-For-Profit Medium Business Enterprise (6-20 employees)
 Government or Local Government Corporate Small Business (5 employees)
 Other (please specify) _____

Address for Correspondence: _____

Phone: _____ Fax: _____

Email: _____ Website Link: _____

(To be used for product listing if approved)

3. Product Details

Copy and complete this section for **each** product application

3.1 Brand Name: _____

3.2 Model Number(s) - if applicable: _____

3.3 Description of the product and its operation (Please attach technical specifications of the product).

3.4 What is the Recommended Retail Price? \$_____ per _____

3.5 Describe how this product saves water.

3.6 Under what circumstances might the use of this product not result in water savings?

3.7 How much water does this product use? (Units could be litres/min, litres/hour or litres per year)

3.8 Is the water use information independently verified? Yes No

If Yes, please attach details of the independent verification. ie copy of test results/report.

3.9 How much water does this product save? (Include common usage examples of water savings by using this product).

3.10 Is the water savings information independently verified? Yes No

If Yes, please attach details of the independent verification. ie copy of the test results/report.

3.11 Availability of the Product: Local Area Interstate (please specify) _____
 Metropolitan State-wide National

3.12 Point-of-Sale availability: Retail outlets Wholesale Website Mail Order/catalogues
 Other (please specify) _____

3.13 If possible, please supply a sample. If a sample is NOT practical, please supply a disk, short video or photographs of the product.
Is a sample attached? Yes No

3.14 What water saving information is provided to customers to ensure correct usage and application?
If insufficient space, please attach copy of the information.

3.15 Does this product comply with all appropriate national and state regulatory, health, plumbing and standards requirements?
 Yes No N/A
If No - please attach details.

3.16 Does this product have any possible negative health and environmental risks? Yes No N/A
If Yes, please provide details and any consumer safety information provided with the product.

3.17 Does the product come with a warranty/guarantee? Yes No
If Yes, please attach a copy of the warranty/guarantee.

3.18 Provide the name and telephone number of two external referees who can advise on the company and/or the product.

Full Name: _____ Company: _____ Phone No: _____

Full Name: _____ Company: _____ Phone No: _____

3.19 Provide the name of an employee who can clarify any technical details and/or answer any other questions regarding this application.

Full Name: _____ Title: _____ Phone No: _____

3.20 Are there attachments to support this application? Yes No
If Yes, please provide a list of attachments.

4. Declaration*

I, _____ as the authorised representative
of _____ acknowledge that:
(insert organisation name)

- I have read and accept the Terms & Conditions of the Smart Approved WaterMark scheme.
- The information used in this application may be used on the Smart Approved WaterMark website and for promotional use of the scheme - unless I specifically indicate otherwise in writing.
- To the best of my knowledge, the information contained in this application and attached supporting material is true and correct.

Signed: _____ Date: _____

Print Name: _____ Title: _____

5. Application Fee Payment

(See Schedule of Fees – Please note that the Application Fee is not refundable)

- I enclose a cheque for \$ _____ payable to **Smart Approved WaterMark**

I wish to pay by Credit Card: Visa Mastercard Bankcard

Card Number Card Expiry Date /

Amount: \$ _____

Name of Cardholder: _____

Signature of Cardholder: _____

Return completed application to:

Expert Panel
Smart Approved WaterMark
GPO Box 915
Sydney
NSW 2001

- * The personal information requested on this form is being collected by WSAA for the Smart Approved WaterMark Scheme. The information will only be used by WSAA for the purpose or related purpose as indicated. This information will not be provided to any third party without your consent, unless where required by law to do so. If this information is not collected we will not be able to correspond with you regarding your application. You may apply to WSAA to view, add, delete or amend your information: info@wsaa.asn.au

WSAA's Privacy Policy is available online at www.wsaa.asn.au

Smart Approved WaterMark Scheme

Terms and Conditions

Effective Date: 16/12/03

1. Applicability

- 1.1 These terms and conditions govern the Smart Approved WaterMark Scheme to the Client under the auspices of the Steering Committee.
- 1.2 The Steering Committee reserves the right to vary these terms and conditions at any time.
- 1.3 Headings used in these terms and conditions are for ease of reference only and do not affect the meaning of these terms and conditions.

2. Definitions

In these terms and conditions:

- 'Application' means the document completed by the client, along with any attachments and supporting material, to be considered for a certificate;
- 'Approval Procedures' means procedures used by the Steering Committee in assessing a product, service or organisation for the purposes of granting or renewal of a Certificate;
- 'AWA' means the Australian Water Association or its successors;
- 'Certificate' means the document issued by the Steering Committee to indicate that a product, service or organisation has been approved;
- 'Client' means the company, organisation or individual seeking a Certificate for a product, service or organisation;
- 'Expert Panel' means the panel of individuals, appointed by the Steering Committee, to determine whether or not a product, service or organisation should be granted a Certificate;
- 'Household' means a permanent individual unit, townhouse, villa or suburban house on a block of land where the owner, renter, leaser or occupier has applied for a label based upon providing proof of purchases or receiving a rebate;
- 'IAA' means the Irrigation Association of Australia or its successors;
- 'NGIA' means the Nursery and Garden Industry of Australia or its successors;
- 'Organisation' means any legal entity and/or trading name operating within Australia;
- 'Product' means water using products or water replacement products that are available to Australian consumers;
- 'Schedule of Fees' means the application, licensing, renewal and other fees that may be set by the Steering Committee from time to time;
- 'Service' means water related services that are available to consumers, the community and industry;
- 'Smart Approved WaterMark Scheme' means all activities as approved by the Steering Committee and generally involves the management of a labelling scheme by way of issuing a Certificate for water related products and services and recognising organisations who demonstrate or support water efficiency;
- 'Steering Committee' means the managing body of the Smart Approved WaterMark Scheme, which is jointly owned by WSAA, IAA and the NGIA and may include other organisations that subsequently join;
- 'WSAA' means Water Services Association of Australia or its successors.

3. Fees

- 3.1 The Client must pay to the Smart Approved Watermark Scheme all fees as set out in the Schedule of Fees.
- 3.2 The Steering Committee reserves the right to amend the Schedule of Fees at any time.

4. Intellectual property rights

The Client acknowledges that:

- (a) The members of the Steering Committee are the owners of copyright, know-how and other intellectual property rights in the Smart WaterMark Scheme, approval procedures and any associated documentation; and
- (b) no right, title or interest in the Smart Approved WaterMark Scheme or any associated documentation is transferred to the Client by receiving a certificate.

5. Confidentiality

- 5.1 In relation to the client's application and any material used to support the application, the client must identify any information that it considers to be confidential in nature. The Steering Committee warrants that it will treat such information, suitably identified, as confidential.
- 5.2 All discussions and deliberations of the Expert Panel are confidential - with the exception of the final decision which takes the form of one of three options: Accept, Reject or Request Further Information.
- 5.3 The obligations of confidentiality under these terms and conditions do not extend to information that:
 - (a) is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
 - (b) is public knowledge (otherwise than as a result of breach of these terms and conditions);
 - (c) is required by the Approval Procedures to be disclosed; or
 - (d) is required by law to be disclosed.

6. Access and co-operation

- 6.1 The Client agrees to comply with the applicable Approval Procedures and to provide the Expert Panel, its agents and contractors with all cooperation and assistance required by the applicable Approval Procedures necessary to enable the panel to consider and approve the issuing of a certificate.

7. Accuracy of information provided

- 7.1 The Client warrants that all information made available to the Expert Panel is, to the best of its knowledge and belief, complete and accurate.

8. Certification

8.1 If-

- (a) the Client complies with these terms and conditions; and
- (b) the client has paid the appropriate application fee as set out in the Schedule of Fees; and
- (c) after assessment of the Client's product, service or organisation in accordance with the applicable Approval Procedures, the Expert Panel approves the application and grants the Certificate;
 - (i) the client will be notified; and
 - (ii) certificate will be issued and access to the label arranged upon the payment of the fees as set out in the Schedule of Fees.

8.2 If the Expert Panel rejects the application, the Client will be advised accordingly.

8.3 If the Expert Panel wishes to seek further information before making a decision, the client will be notified.

9. Duration of Certification

- 9.1 Subject to these terms and conditions, the Certificate continues until the expiry date as referenced on the Certificate - usually 2 years.

10. Renewal of Certification

- 10.1 It is the responsibility of the Client to renew the Certificate before the expiry date as referenced on the Certificate.

11. Changes

- 11.1 The client must maintain the product, service or organisation to accord with the Approval Procedures and as stated in the application and supporting material.
- 11.2 The client must notify the Expert Panel or reapply, if any specifications, that are related to the Approval Procedures and as stated in the application and supporting material, significantly change.
- 11.3 The client must promptly inform the Expert Panel of any change in ownership and contact details, including address, and website address.

12. Use of Certificate

- 12.1 The client must not, without the Steering Committee's permission, alter, modify, or deface the Certificate.
- 12.2 Subject to these terms and conditions, the client may publicise the fact that a Certificate has been approved and use the Certificate as evidence of approval. The client may copy the Certificate.
- 12.3 The original and all copies of the Certificate remain the property of the Steering Committee and must be returned immediately if requested.

13. No misrepresentation of the Certificate

13.1 The Client must not-

- (a) engage in any conduct which might mislead, deceive or confuse any person in relation to; or
- (b) otherwise misrepresent the nature, status, scope or effect of its Certificate.

- 13.2 The Client must promptly comply with any directions given by the Steering Committee to correct any conduct or misrepresentation in breach of clause 13.1.

14. Suspension, cancellation or expiry of Certification

14.1 The Steering Committee may suspend the Client's Certificate with immediate effect by giving notice to the Client if:

- (a) the scheme ceases to exist;
- (b) the client ceases to carry on business;
- (c) the client ceases to be able to pay its debts as they become due;
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business of the client; or
- (e) the client breaches these Terms and Conditions;
- (f) the client applies the label to a non-approved product, service or organisation;
- (g) the client is found not to deliver water savings or efficiencies as advised to the Expert Panel;
- (h) the client is found not to be of a high quality, based upon consumer complaints and/or independent tests carried out by the Expert Panel or other recognised agencies;
- (i) at the end of the two (2) year period, the client does not renew.

14.2 Where the Client's Certificate is suspended-

- (a) if the Client responds within 30 days and if the Expert Panel is satisfied with the remedial action taken by the client - the suspension will be lifted
- (b) if the Client responds within 30 days and if the Expert Panel is not satisfied with the remedial action taken by the client - the certificate will be cancelled
- (c) if the Client fails to respond in 30 days - the certificate will be cancelled

14.3 If the Certificate is cancelled under Clause 14.1 and 14.2:

- (a) no payments will be refunded;
- (b) the client must take all reasonable steps reasonably to prevent the public being misled or otherwise harmed;
- (c) the client must cease using the Certificate;
- (d) the client must cease all advertising, promotions or other publication related to Certificate;
- (e) the client must take any steps reasonably to notify staff, customers and/or suppliers of the cancellation of the Certificate;
- (f) the client must take steps to remove all references to the certificate, including signage, product labelling, publications and web site;
- (g) the client must take all other necessary steps to ensure that third parties are not misled to believe that the Certification has not been cancelled;
- (h) the Steering Committee will remove the certificate from all listings and promotional material;
- (i) the Steering Committee will use its best endeavours to ensure that the public are informed including issuing press releases and making media comment.

15. Client Termination of Certificate

15.1 The Client may terminate the Certificate by giving the Steering Committee written notice - 3 months in advance.

15.2 If the Client complies with Clause 14.3 (b) - (g) inclusive, a pro-rata refund for the amount paid by the client, as set out in the Schedule of Fees will be refunded, at the end of the 3 month notice period.

15.3 The Steering Committee will enact Clause 14.3 (h) & (i) at the end of the 3 month notice period.

16. Appeals

The client has rights to appeal the decision of the Expert Panel. Such an appeal needs to be made in writing to:

Chair
Smart Approved WaterMark Steering Committee
PO Box 13172
Law Courts Post Office
Melbourne Victoria 8010

The client is to have the right to appear in person before the committee to put its case.

17. Notices

17.1 A party giving notice under the Contract must do so in writing with the notice:

- (a) directed to the recipient's address for correspondence as nominated in the Application or as varied by any notice; and
- (b) hand delivered or sent by prepaid post or facsimile or emailed to that address.

17.2 A notice given in accordance with Clause 17.1 is taken to be received:

- (i) if hand delivered, on delivery;
- (ii) if sent by prepaid post, three days after the date of posting; or
- (iii) if sent by facsimile or e-mail, when the sender's facsimile or e-mail system generates a message confirming successful transmission of the total number of pages of the notice.

18. Assignment

The Client must not assign or otherwise transfer any or all of its rights in relation to the certificate, without the prior written consent from the Steering Committee.

19. Limitation of liability

19.1 The Steering Committee excludes from these terms and conditions all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition').

19.2 The Steering Committee excludes liability for any loss or damage suffered by the Client (whether direct, indirect or consequential) arising in any way out of any services (including defective services) rendered by the Steering Committee or out of the Client's product which is the subject of a Certificate by the Steering Committee and Expert Panel or any negligent act or omission of the Steering Committee, its officers, employees, agents or contractors, including but not limited to profits lost and damage sustained or incurred as a result of a claim by a third person.

20. Insurance

The Client must:

- (a) take out and maintain valid and enforceable public liability, professional indemnity and workers' compensation insurance policies to cover potential liability of:
 - (i) the Client arising out of a breach of Contract; and
 - (ii) the Steering Committee and the Expert Panel arising out of the Client's breach of these terms and conditions or any act or omission of the Client, as if the Steering Committee and Expert Panel were a jointly insured party under each of those policies; and
- (b) provide the Steering Committee with Certificates of currency and any other evidence of those policies if requested.

21. Indemnity

The Client must indemnify the Steering Committee and the Expert Panel from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against the Steering Committee and the Expert Panel) that the Steering Committee and the Expert Panel may sustain or incur as a result, whether directly or indirectly, of:

- (a) any breach of these terms and conditions by the Client, including, but not limited to, a breach in respect of which the Steering Committee and the Expert Panel exercises an express right to terminate these terms and conditions; or
- (b) any loss of or damage to any property or injury to or death of any person;
 - (i) caused by any negligent act or omission or wilful misconduct of the Client or its officers and employees;
 - (ii) arising out of or in connection with the Client's product, process or service that is the subject of Certification.

22. Relationship

Under these Terms and Conditions, the Certificate and Approval Procedure does not create any fiduciary, employment, agency or partnership relationship between the Steering Committee and the Client.

23. Force majeure

No party is liable for any failure to perform or delay in performing its obligations under these terms and conditions if that failure or delay is due to flood, fire, earthquake or other occurrence beyond that party's reasonable control.

24. Governing law and jurisdiction

24.1 The Contract is governed by the law applicable in the State of Victoria, Australia

24.2 Each party submits to the non-exclusive jurisdiction of the courts of the State of Victoria.