

Independent review of the Water Efficiency Labelling and Standards scheme

Chris Guest

30 June 2010

The Water Efficiency Labelling and Standards (WELS) scheme is an Australian Government initiative in partnership with state and territory governments.



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The Commonwealth *Water Efficiency Labelling and Standards Act 2005* (the Act) provides for an independent review of the Water Efficiency Labelling and Standards (WELS) Scheme being undertaken after five years of the scheme's operation.

Following consultation with all states and territories, on 14 November 2009 the Commonwealth Minister for Environment Protection, Heritage and the Arts, Peter Garrett, appointed me to conduct the Review.

I have been asked to examine the appropriateness, effectiveness and efficiency of the operation of the scheme, consider opportunities for improvement and make recommendations. The Terms of Reference for the Review are at Attachment A.

The Review has had a high level of support from: WELS staff in the Department of the Environment, Water, Heritage and the Arts; staff in the Appliance Energy Efficiency Branch of the Department of Climate Change and Energy Efficiency; state and territory officials; and water utility and private sector stakeholders. This constructive engagement has helped my task significantly and underpins the Review Report.

I have been greatly helped by the Review Secretariat, Priscilla Ho and Dane Roberts. I very much want to thank Priscilla and Dane for their work: Priscilla for her always-cheerful assistance in the innumerable organising and research tasks required for producing the Report, and Dane for guiding me through the detail of WELS and for his considered and thorough responses to my questions and ideas.

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Contents

Executive summary	1
The Water Efficiency Labelling and Standards Scheme.....	1
Overview of findings and recommendations of the review	1
Findings	1
Recommendations	2
Conclusion	6
1 The Water Efficiency Labelling and Standards Scheme.....	8
1.1 Background.....	8
1.2 Application of WELS by states and territories.....	9
1.3 The results of WELS	9
1.4 The regulatory framework for water-using products	9
The equipment energy efficiency scheme.....	10
WaterMark certification scheme.....	10
Case studies of the regulatory framework for water-using products	10
2 Review of the Water Efficiency Labelling and Standards Scheme	13
The process for the review	13
The elements of the WELS scheme	14
1. Governance	14
2. Objects of the Act	18
3. WELS standards.....	19
4. WELS administration	20
5. Registration	24
6. Labelling	26
7. Compliance	29
8. Communications	33
9. Product expansion and setting new Minimum Water Efficiency Standards	33
10. Cost recovery	35
11. Trans-Tasman Mutual Recognition Arrangement	37
12. Relation to other schemes	38
3 Conclusion	39
Attachments	40
Attachment A: Terms of reference.....	40
Purpose	40
Appropriateness.....	40

Effectiveness	40
Efficiency.....	40
Intergovernmental agreement	41
Consultation.....	41
Deliverables	41
Attachment B: List of submissions to the discussion paper	42
Attachment C: References.....	43

Tables

Table 1: Requirements for WELS labels.....	27
Table 2: Comparison of Expenditures and Revenues.....	35

Boxes

Box 1: The Regulatory Framework for Clothes Washing Machines	11
Box 2: The Regulatory Framework for Tap Ware	11

Executive summary

The Water Efficiency Labelling and Standards Scheme

The Water Efficiency Labelling and Standards (WELS) Scheme was established by the Commonwealth *Water Efficiency Labelling and Standards Act 2005*. The scheme is a co-operative legislative arrangement, with equivalent state and territory legislation.

The scheme's objects are to conserve water supplies by reducing consumption, through providing information to consumers about the water efficiency of products and by promoting the adoption of water efficient technologies.

To achieve these objects, the scheme requires designated water-using products to display, at the point of sale, a star rating of their water efficiency and information about the volume of water used. The scheme can also set minimum efficiency standards for designated water-using products.

The Commonwealth Minister determines which water-use or water-saving products come under the scheme. To make the determination, the Minister needs the agreement of the majority of the states and territories.

The scheme currently covers toilets, clothes washing machines, dishwashers, urinals, taps and showers. These products must display, at the point of sale, a star rating of their water efficiency and information about the volume of water used. Only toilets have a minimum water efficiency standard (this standard predates the scheme). Flow controllers can be registered and labelled under the scheme on a voluntary basis.

The WELS Scheme was established as a cost recoverable program, with registration fees set at a level that was to raise around 80 per cent of the scheme's funding. The remaining 20 per cent of costs were to be met by governments.

Overview of findings and recommendations of the review

Findings

There is no doubt that the WELS Scheme is a good public policy. This view is shared by stakeholders.

The scheme's objective of conserving water by reducing consumption through greater use of water efficient products is appropriate, given the increasing scarcity of water. Its use of market instruments by providing information to assist consumer decisions about the purchase of water-using products and by setting standards is efficient and effective. The national scope of the scheme is appropriate and efficient as the market for water-using products is national.

The WELS Scheme provides states and territories with significant benefits for their programs that encourage (through rebates) or prescribe (through planning requirements) the use of water-efficient products. These programs reference WELS ratings, which provide states and territories with a convenient and authoritative source for setting rebates and prescribing water efficiency for planning approvals. Without the WELS Scheme, something similar would be required to perform these functions.

Nonetheless, there are four significant issues the WELS Scheme needs to address. These are: governance, compliance, administration and the level and source of funding.

The WELS governance issue is that decisions are not being made at the right level: too much is left to the Ministerial Council, while the officials' inter-governmental WELS Advisory Committee (WELSAC) performs an unduly limited role. In addition, stakeholders rightly feel they are not being engaged properly.

In relation to compliance, the Review has concluded that the Criminal Code basis of the Act is inappropriate; that sanctions need to better reflect the nature of the offences; that the offences themselves need to be recast; and that check testing of the accuracy of the water efficiency information on WELS labels needs to be significantly increased. Check testing is an important issue for the scheme, because the accuracy of the information on WELS labels is critical to the effectiveness of the scheme.

On administration, the key structural question is whether the current separation of responsibility between WELS and the parallel Equipment Energy Efficiency program (E_3) is appropriate or efficient, and whether the WELS administration of plumbing products might be better located with the body responsible for the WaterMark Scheme, which certifies that plumbing products are fit for use.

Finally, the scheme has been under-resourced. Among other things, this is reflected in the very limited scope of compliance and communications programs, both of which are central to the scheme's effectiveness. WELS' annual expenditure is around \$2.2 million compared with \$10.3 million for its energy counterpart, E_3 .

The funding strategy has not worked. Whereas the target was 80 per cent, income from registrations has been around 20 per cent of scheme expenditure. Thus, the scheme's funding strategy is unlikely to yield sufficient funding, even if the current liberal provision for free registrations of new products were tightened. In addition, the funding strategy's high 80 per cent cost recovery target is inappropriate, because the scheme's principle output is information, which is a public good. Public goods are primarily funded by governments.

Recommendations

The premise to the Review's recommendations is that the scheme remains a co-operative arrangement of all governments. A consequence of this premise is that the Review assumes continued funding contributions by states and territories. In this context, the intent of the recommendations on governance is to strengthen and re-invigorate the co-operative nature of the scheme, by finding a way for states and territories to be more effectively engaged. The opportunity to jointly develop the proposed three-year strategic plan is a vehicle by which states and territories can engage in the management of the scheme, and agree on a budget and funding contributions.

The issues facing the scheme are largely ones of delivery rather than design. For this reason, the recommendations address the issues facing the scheme within the framework of the existing Act and Intergovernmental Agreement (IGA). Working within this framework means that implementation to that extent should be simpler, while still achieving significant improvements in the performance of the scheme.

Only limited legislation would be required to implement the recommendations, mostly in relation to compliance. Some policy changes would be needed, such as in relation to cost recovery. Administrative change would be required to bring WELS and E₃ together, and allocate the WELS' responsibility for plumbing to the WaterMark certification body.

Water-using products are subject to a complex web of regulation. In addition to WELS, they are subject to either or both E₃ and WaterMark. Each of these sets of regulation is complex in itself, and often references other regulation. The recommendations aim to address WELS' issues as simply as possible, and in doing so simplify the scheme, so that at least the WELS part of the regulatory framework is easier to manage and navigate.

Recommendations

The report makes recommendations for each of the elements of the WELS Scheme.

1. Governance

It is recommended that:

- 1.1 (i) WELSAC develop and agree to a three-year strategic plan and budget for approval by the Ministerial Council. The strategic plan would set out the priority activities for WELS. It would seek Ministerial Council approval of delegated decision-making authority to WELSAC in relation to specified matters in the plan; and

(ii) WELSAC provide annual reports to the Ministerial Council on outcomes against the three-year plan, including recommendations for any revisions to the plan.
- 1.2 Governments review their representation on WELSAC to ensure representatives have the delegated authority required for the new WELSAC responsibility of developing and managing the three-year strategic plan.
- 1.3 WELSAC be renamed the WELS Officials Group to reflect its new responsibility for the three-year strategic plan and budget.
- 1.4 A representative of the WaterMark certification body be appointed as an observer member of WELSAC (if the WELS plumbing responsibilities are transferred to the WaterMark certification body – see Recommendation 4.2).
- 1.5 (i) A WELS Advisory Group of stakeholders be established to advise WELSAC and the Ministerial Council.

The Advisory Group would:

- (ii) provide comments to the Ministerial Council on the draft three-year strategic plan;
- (iii) comprise up to 10 members, and be chaired by a stakeholder member; and
- (iv) be appointed by the Commonwealth Minister, after consultation with states and territories.

- (v) The chair of the WELS Advisory Group would attend part of the WELSAC meetings to present the Advisory Group's views on the draft three-year strategic plan.

2. Objects of Act

It is recommended that:

- 2.1 No changes be made to the objects of the Act.

3. WELS Standards

It is recommended that:

- 3.1 The Standards Australia process be retained for setting WELS Standards.
- 3.2 The WELS Regulator more actively manage the Standards Australia process, including providing increased resources and funding as determined in the three-year strategic plan.
- 3.3 A clause be added to the Act:
 - (i) By which manufacturers, importers, wholesalers and retailers be given a period of notice of a change in standards or a new standard; and
 - (ii) To allow the sale of any remaining stock they may hold when a change of standards or a new standard takes effect.

4. The Regulator – WELS Administration

It is recommended that:

- 4.1 The WELS administration be merged with the E₃ administration, and have responsibility for all WELS policy matters and the administration of WELS white goods to yield economies and synergies, particularly in relation to registration and compliance, investigating new products and standards, and communications and training programs.
- 4.2 WELS' registration, compliance and communications functions for plumbing products be transferred to the body responsible for WaterMark certification.

5. Registration

It is recommended that:

- 5.1 The scope for registration under the family-of-models provision be limited to cosmetic variants of models.
- 5.2 A new registration be required for each re-branded model.
- 5.3 The requirement for Gazettal to give effect to a new registration be removed.
- 5.4 The WELS Regulator send an annual registration check to registration holders to verify current registration data or update data as necessary, and the five-year registration renewal requirement be removed from the Act.

5.5 The provision for voluntary registration be removed from the Act.

6. Labelling

It is recommended that:

6.1 Consistent labelling across all WELS products be adopted and that labels show the brand, model name and number, and WELS registration number, as well as star rating and water efficiency information.

7. Compliance

It is recommended that:

7.1 Offences be established as both civil and criminal penalty provisions.

7.2 New civil sanctions be established, including public apologies, a requirement for new, corrected labels, suspension and deregistration of products and family of models, product recall and compensation to consumers.

7.3 The following offences be established:

(i) sell or offer for sale an unlabelled WELS product (a retailer responsibility);

(ii) sell or offer for sale an unregistered WELS product, with the onus of proof to be on the supplier to show that the product is registered (a manufacturer or importer responsibility);

(iii) sell or offer to sell a WELS product with a WELS label containing false or misleading information (a manufacturer or importer responsibility); and

(iv) sell or offer to sell a WELS product that does not meet a required minimum water efficiency standard (a manufacturer or importer responsibility).

7.4 The WELS Regulator and the Australian Competition and Consumer Commission settle a co-operation agreement for referring instances of misleading conduct which could be covered by the *Trade Practices Act 1974*.

7.5 (i) A check testing program be established for white goods; and

(ii) noting that compliance testing for plumbing products would be covered by ISO Type 5 certification in the event that plumbing products were transferred to the WaterMark certification body, ISO Type 5 should be reviewed for WELS compliance purposes.

7.6 Advertising not be required to display WELS information.

8. Communications

It is recommended that:

8.1 A range of new communication activities be developed and implemented, including training programs for retail sales staff.

9. Product expansion and setting new Minimum Water Efficiency Standards

It is recommended that:

- 9.1 A Regulation Impact Statement be undertaken to assess the costs and benefits of removing water efficiency ratings and in their place prescribing only a minimum Water Efficiency Standard (WES) for plumbing products, such as tap ware.

10. Cost Recovery

It is recommended that:

- 10.1 (i) The Commonwealth Minister seek agreement from the Minister for Finance that the scheme not be cost recoverable;
- (ii) If the Minister for Finance agrees, then the registration fee recover only the cost of the registration process; and
- (iii) All governments contribute the funds required to meet the gap between registration income and the funding required for the three-year strategic plan.

11. Trans-Tasman Mutual Recognition Arrangement

It is recommended that:

- 11.1 WELSAC monitor the impact on the Australian market of the New Zealand WELS Scheme.

12. Relation to Other schemes

It is recommended that:

- 12.1 A single web portal be established to provide information about WELS, WaterMark and Smart-Approved WaterMark, which provides a link to the home pages for each of the three programs and links between their home pages.
- 12.2 WELS and Smart-Approved WaterMark agree to a Memorandum of Understanding to promote co-operation and complementary roles.

Conclusion

The recommendations do not provide a detailed blueprint for action; rather, they are high level and set a direction for change. Detailed work would be required for their implementation. In this context, the Review suggests that the priority implementation tasks should be for WELSAC to develop the first three-year strategic plan and budget, and for the WELS Advisory Group to be appointed. The plan should be targeted to being submitted to the next Ministerial Council meeting (scheduled for November 2010).

The strategic plan should include a program of work for implementing other aspects of the Review Report, such as legislative amendments for compliance matters, registration arrangements, new product and standards assessments and check testing.

Any administrative changes in relation to WELS, E₃ and WaterMark would require an early in-principle decision. However, their implementation could occur after the three-year strategic plan has been approved by the Ministerial Council. This would allow work to focus on one thing at a time. It may also fit better with the current E₃ priorities of developing national legislation for the energy scheme.

The effectiveness and pace of implementation would be assisted by establishing a small task group to do the work required. This task group should have a fixed term, and would benefit from having a seconded state or territory official, as well as Commonwealth officials.

Finally, it is noted that many of the Review's recommendations are interdependent. That is, the implementation of one recommendation would require that other recommendations also be implemented. This is particularly so in relation to registration fees, cost recovery and funding the scheme.

The current challenge for the WELS Scheme is to get a good policy working much better. Looking to the future, beyond the first three-year plan, there will undoubtedly be new challenges for WELS.

The sustainable use of natural resources seems likely to continue to be a community concern. For WELS, the pressure for sustainability may mean the need to examine the relationship with other aspects of resource-use sustainability, particularly energy. The way forward could be to examine closer integration of schemes for water and energy efficiency. If the Review's recommendations are adopted, particularly those in relation to governance and administration, the WELS Scheme would be in a strong position to address the challenges of achieving sustainable natural resource use.

1 The Water Efficiency Labelling and Standards Scheme

1.1 Background

There is a long history in Australia of regulating water-using products, dating back to the 1920s. The role was exercised by water authorities over plumbing products until recently, although SA Water still retains this role. The water authorities introduced the National Plumbing and Drainage Products Certification Scheme.

The direct genesis of WELS was a voluntary water efficiency labelling scheme established in 1988, initially managed by the Melbourne Metropolitan Board of Works alone, and later also managed by Sydney Water. The voluntary scheme was introduced under the auspices of the Water Efficient Appliances and Plumbing Committee that reported to the Australian Water Resources Council. In 1999 responsibility for the scheme was transferred to the Water Services Association of Australia, which represents water utilities. The scheme used an “A” rating structure.

In 2004 the Commonwealth, state and territory governments committed to establishing a national water efficiency labelling scheme in the National Water Initiative (Paragraph 91(i)).

In the following year the Australian Government and state and territory governments entered into the Water Efficiency Labelling and Standards Intergovernmental Agreement (IGA). The IGA agreed to create the WELS Scheme (the scheme) by complementary Commonwealth, state and territory legislation.

The scheme was established by the Commonwealth *Water Efficiency Labelling and Standards Act 2005* (the Act). States and territories enacted equivalent legislation, which addresses those matters outside the Commonwealth’s constitutional heads of power. The Act commenced on 18 March 2005. Following a phase-in period, the scheme became mandatory on 1 July 2006.

The scheme’s objects, as expressed in the Act, are to conserve water supplies by reducing consumption, through providing information to consumers about the water efficiency of products and by promoting the adoption of water efficient technologies, including by setting minimum efficiency standards.

WELS is designed to improve the performance of the market for water-using products by increasing the sale of water efficient products, thus contributing to water conservation. On the demand side, WELS’ purpose is to guide consumers to more water efficient appliances and fittings, by providing information about water efficiency that would otherwise be difficult to obtain. Indirectly, this may encourage the supply of water efficient appliances through increased consumer demand. On the supply side, the scheme aims to improve the performance of products above what they would otherwise be, by setting minimum water efficiency standards and by encouraging competition between producers in relation to water efficiency.

To achieve these objects, the scheme requires that designated water-using products display, at the point of sale, a star rating of their water efficiency and information about the volume of water used.

The Commonwealth Minister determines that certain water-use or water-saving products are WELS products. To make the determination, the Minister needs the agreement of the majority of the states and territories.

Currently, the scheme covers toilets, clothes washing machines, dishwashers, urinals, taps and showers. Minimum water efficiency standards apply only to toilets. Flow controllers can be registered and labelled under the scheme on a voluntary basis.

1.2 Application of WELS by states and territories

All states and territories either offer or have offered rebates on the purchase of water-using appliances, most commonly for clothes washing machines, showerheads and toilets. Rebates are offered on products with a specified WELS rating. An attraction of encouraging water efficient products is that, to the extent the savings do not depend on consumer behaviour, they “hardwire” water savings for long-term water conservation.

Rebates appear to have strongly affected the composition of appliance sales. The number of water efficient models on offer has expanded, and sales of these models have increased strongly. However, there is some evidence that once a rebate program ends, consumers revert to cheaper, less water efficient models.

In recent years state and territory planning frameworks have also sought to address water conservation by prescribing water efficiency standards for new residential and non-residential buildings, by reference to the WELS ratings of appliances and fittings. Although the extent of water efficiency prescriptions varies between jurisdictions, there is a clear trend to increasing prescriptions about water efficiency, along with energy efficiency, for new building work.

In these ways, the WELS Scheme provides states and territories with significant benefits for their water efficiency programs. WELS ratings provide a convenient and authoritative reference for setting rebates and prescribing water efficiency for planning purposes.

1.3 The results of WELS

A cost effectiveness study undertaken by the Institute for Sustainable Futures for the Commonwealth Department of the Environment, Water, Heritage and the Arts (DEWHA) found that the scheme has generated water savings at a cost of \$0.08KL to \$0.21KL (ISF, 2008). This compares favourably with other demand management and supply augmentation measures. For instance, desalination can cost between \$1.19KL to \$2.55KL (*ibid*). On the other hand, the scope for new water savings from WELS will diminish as the adoption of water efficient appliances becomes widespread.

The study projected that over the period 2005-06 to 2020-21, WELS will reduce national water consumption by a total of 800GL, which is almost double the annual water consumption of greater Sydney. The main savings were estimated to come from showerheads (290GL) and washing machines (280GL).

1.4 The regulatory framework for water-using products

WELS is part of a wider regulatory framework for water-using products, which includes the Equipment Energy Efficiency Scheme (E₃) and the WaterMark Certification Scheme. Some description of these two schemes is useful to understanding the context for the Review.

The equipment energy efficiency scheme

E₃ is the energy counterpart of the WELS Scheme. The two schemes operate in parallel but separately. Clothes washers and dishwashers are subject to both WELS and E₃.

The E₃ Scheme commenced nationally in 1992, and includes a range of measures to increase the energy efficiency of products used in the residential, commercial and manufacturing sectors. The two main policy tools are minimum energy performance standards (MEPS) and mandatory energy efficiency rating labelling. Labelling is required for household refrigerators and freezers, clothes washers, clothes dryers, dishwashers, air conditioners (single phase) and televisions.

Although the scheme is national, it is implemented by state legislation; there is no Commonwealth legislation. In July 2009, COAG released a National Strategy for Energy Efficiency. The strategy includes developing Commonwealth legislation for E₃.

WaterMark certification scheme

WaterMark is a certification trademark used in relation to water, sewerage, plumbing and drainage products. Certification denotes that a product is fit for purpose. For instance, where the product carries water for potable purposes, certification denotes that it meets health requirements. If the product is connected to a mains water supply system, WaterMark certification denotes that the product meets mains pressure requirements. Products that are not WaterMark certified can be legally sold, but cannot be legally installed. WaterMark regulates installation, not sale.

States and territories are responsible for plumbing regulation. The regulatory arrangements for plumbing and drainage products vary somewhat between states and territories. Generally, they require compliance with *MP52 – Manual of Authorization Procedures for Plumbing and Drainage Products*. Work is underway to achieve a uniform system where a single certification mark, WaterMark, is used to certify compliance with the required specifications and standards. To this end, the Plumbing Code of Australia is being introduced into the legislation of states and territories to replace MP52.

The National Plumbing Regulators Forum (NPRF) oversees the WaterMark Certification Scheme. The NPRF is a co-operative arrangement between jurisdictions and has no executive power. It is the national policy advisory body responsible for the policy direction relating to technical matters associated with the Plumbing Code. The competence of the third party certification bodies is assessed and monitored by the Joint Accreditation System of Australia and New Zealand.

WaterMark is owned and managed by Standards Australia. However, Standards Australia has indicated that it wants to divest itself of this role by December 2010. Standards Australia does not grant licences for the use of WaterMark directly to users. Instead, it enters into an agreement with a WaterMark Conformity Assessment Body (CAB) to grant them the right to enter into licence agreements directly with Approved Users for the use of the WaterMark. A CAB has to be registered with, and approved by, the Joint Accreditation System of Australia and New Zealand.

Case studies of the regulatory framework for water-using products

The regulatory framework is illustrated by the brief outlines of the arrangements for clothes washing machines and tap ware presented in Box 1 and Box 2.

Box 1: The Regulatory Framework for Clothes Washing Machines

Approximately 835,000 clothes washing machines were sold in 2008-09. All were imported, mainly from Thailand and China (MMA 2010, *WELS Scheme Supply Chain Scoping Study*). While several international standards apply to clothes washing machines (for example, *IEC 61770 – Electric Appliances Connected to the Water Mains*), there are three sets of Australian regulations: WELS, E₃ and WaterMark.

In addition to registration and water efficiency labelling requirements under the WELS scheme (currently specified in AS/NZS 6400 – *Water Efficient Products - Rating and Labelling*, and related standards), suppliers of clothes washing machines are required to comply with registration and energy efficiency labelling requirements under the E₃ scheme (currently specified in AS/NZS 2040 – *Performance of Household Electrical Appliances - Clothes Washing Machines*, and related standards).

Clothes washing machines must also comply with electrical safety requirements outlined in AS/NZS 60335 – *Household and Similar Electrical Appliances - safety*. These requirements apply to both completed products and to individual parts. Clothes washing machines must also comply with AS/NZS CISPR 14 – *Electromagnetic Compatibility*.

Clothes washing machines are regulated under the WaterMark certification scheme (AS/NZS5200 – *Technical Specification for Plumbing and Drainage Products – procedures for certification of plumbing and drainage products*). They require WaterMark certification to demonstrate the safety of their hose and siphon assemblies.

There are also a range of related Australian standards referenced within the above regulations, with which clothes washing machines must comply. For example, through reference in AS/NZS2040, clothes washing machines must comply with AS/NZS 62301 – *Household Electrical Appliances – Measurement of standby power*.

Box 2: The Regulatory Framework for Tap Ware

There were 6,925 tap ware models registered with the WELS scheme for supply within Australia (at 30 June 2010). The majority are imported from China.

Under the WELS Scheme, specified tap ware must be registered and labelled in accordance with AS/NZS 6400 – *Water Efficient Products - Rating and Labelling* to be offered for supply within Australia. The WELS Scheme requires plumbing products to be tested in a laboratory accredited by the National Association of Testing Authorities. The WELS standard then directly and indirectly references a number of related product standards, some of which apply to tap ware. In turn, those standards reference further standards. For example, AS/NZS 6400 references AS/NZS 3718 – *Water supply – tap ware*. Within AS/NZS 3718, there are around 40 additional cross-referenced standards. Those standards relate to the testing of, or requirements for plumbing products and their components (the standards may affect the tap directly or the infrastructure that links to the tap). They may only relate to certain taps (*AS/1769 – Welded stainless steel tubes for plumbing applications* relates to tap ware containing stainless steel), or they may have other technical connections.

WaterMark certification requirements to which tap ware must comply are set out in the plumbing regulations of each state and territory, which have similar but not identical requirements. These requirements are established through reference to a number of different standards, including the *Plumbing Code of Australia*, AS/NZS5200 – *Technical Specification for Plumbing and Drainage Products – procedures for certification of plumbing and drainage products* and AS/NZS3500 *Plumbing and Drainage*.

There is sure to be a case for each of the elements of the regulatory frameworks for white goods and plumbing products. However, when considered as a whole, the totality of standards applying to each product is daunting. Compliance and administration costs are likely to be significant. The question is whether the same outcomes could be achieved more efficiently by a simpler regulatory system. It warrants investigation.

2 Review of the Water Efficiency Labelling and Standards Scheme

The process for the review

The first stage of the Review was an extensive round of stakeholder consultations which sought a comprehensive and representative set of experiences and views about the scheme. Fifty three stakeholder meetings were conducted during February and early March 2010. The meetings provided a thorough understanding of the perspectives of these stakeholders about the effectiveness, efficiency and appropriateness of the WELS Scheme.

The meetings were with the following stakeholders:

- WELS Advisory Committee (WELSAC) members – these are state and territory government representatives, and officials from the New Zealand Government, which is an observer member of WELSAC
- Other state and territory government agencies that deliver programs (such as rebates) or regulate activities (such as building and planning codes) using WELS ratings
- Industry associations
- Urban water utilities
- Manufacturers, importers, wholesalers and retailers
- Non-Governmental Organisations
- Individual experts

The consultations yielded a set of recurring, credible issues and options to address these issues that fell within the Terms of Reference for the Review. The Review itself also identified some additional issues and options, particularly in relation to the governance and administration of the scheme.

These issues and options were presented in a discussion paper, released on 8 April 2010.

Submissions were invited in response to the discussion paper, with a closing date of 7 May 2010.

Four roundtable meetings with stakeholders were held in Sydney and Melbourne on 28 and 29 April 2010. The meetings were attended by 27 stakeholders. The meetings canvassed the matters presented in the discussion paper. No issues outside those in the discussion paper were identified.

Twenty eight submissions were received in response to the discussion paper. Twenty-six of these submissions can be accessed on the Review website (www.environment.gov.au/welsreview). The other two submissions requested confidentiality. A list of the submissions is at Attachment B.

Many of the submissions addressed all the issues in the discussion paper. Other submissions focussed on particular aspects of the scheme. All reflected a great deal of thought and have been important for the Review.

The elements of the WELS scheme

The Report considers each element of the scheme. Following a short outline of each element, the Report identifies and assesses the issues of each and makes recommendations in relation to most. For some elements, the Review confines itself to making observations about possible future action.

1. Governance

The Legislative Model for the Co-operative Scheme

WELS is a co-operative national scheme. The Commonwealth, states and territories have each passed equivalent legislation. This means that if and when governments agree to amend the legislation for the scheme, the amendments must be made in each parliament. The alternative to this arrangement is an applied model, whereby amendments agreed by governments are presented in one parliament and, if passed there, are then automatically adopted by all other parliaments. The applied model has been used for the *National Gas (South Australia) Act 2008*. It is an option for E₃ governance presented in the *Discussion Paper on proposed national legislation for Minimum Energy Performance Standards (MEPS) and Energy Labelling* (August 2009).

The applied model has the benefits of ensuring complete consistency of legislation and of expediency – legislation is considered in one parliament rather than nine. However, this means that the upper houses in the other parliaments lose their capacity to review the decisions of governments. Accordingly, the model is regarded as being suited to technical subject matters, particularly where uniformity between jurisdictions is important.

To date, no amendments have been made to any WELS legislation, so the legislative model has not mattered. However, some recommendations of this Review would require legislative amendments. It would not be appropriate to consider the applied model at the same time as the first WELS legislative amendments are being proposed. At this time, the focus of work should be to implement changes that improve the performance of the scheme. While it is considered an appropriate option, adoption of the applied model should be deferred.

Ministerial Council

The Environment Protection and Heritage Council (EPHC) is the ministerial council for discussion of WELS issues. It comprises Commonwealth, state and territory environment ministers. The issue is whether the EPHC is the appropriate ministerial forum.

Within the Commonwealth, the Minister for Environment Protection, Heritage and the Arts is responsible for the scheme. In all other jurisdictions, the scheme is the responsibility of water ministers. So for states and territories, an arrangement is required whereby water ministers provide advice to their environment colleagues on EPHC WELS agenda items.

The Natural Resource Management Ministerial Council (NRMMC) had been responsible for the scheme during its development. The NRMMC comprises water ministers and is responsible for the National Water Initiative. As WELS is an element of the National Water Initiative, there is an argument that WELS should return to the NRMMC. It is noted that E₃ is considered by the Ministerial Council on Energy, which comprises energy ministers.

It is suggested that the question of the Commonwealth Ministerial responsibility for the WELS Scheme be considered at a time when ministerial responsibilities are being reviewed more generally

by the Australian Government. If the scheme were allocated to the Commonwealth water minister at that time, then responsibility for the scheme should be transferred to the NRMCC. Until then, the EPHC should remain the responsible Ministerial Council.

The Roles of WELSAC and the Ministerial Council

The 2005 Water Efficiency Labelling and Standards Intergovernmental Agreement (IGA), which established the scheme, included provision for a WELS Advisory Committee (WELSAC) to “oversee the implementation of the scheme”. WELSAC comprises officials from the Australian, state and territory governments, and a representative from the New Zealand Government as an observer.

In practice, WELSAC has not had an active role in “overseeing the implementation of the scheme”. In the absence of an active role by WELSAC, the EPHC has been the inter-jurisdictional body overseeing the scheme. However, a Ministerial Council is not the appropriate forum to oversee a relatively small scheme like WELS. Given that the EPHC meets only twice per year, this has meant that the WELS Regulator has assumed the role of driving the development of the scheme, with decisions being taken as required at EPHC meetings. This is an undesirable governance arrangement: a ministerial council is called on to perform an inappropriate role, the accountability of the WELS Regulator is tenuous, and states and territories officials become disengaged.

A more effective governance arrangement is required. Working within the existing institutional arrangements, the “oversight” role of WELSAC needs to be made clear, so that it exercises a more effective role in the administration and development of the scheme. This would yield an appropriate, high-level decision-making role for the Ministerial Council.

To make WELSAC more effective, in a way that will endure, requires giving it a concrete on-going and appropriate task. It is proposed that WELSAC be given the role of developing a three-year strategic plan and budget for the WELS Scheme. The plan would set out proposed new products, standards and minimum Water Efficiency Standards (WES) for investigation (including whether minimum WES should replace ratings for some products), compliance activities, communications and any other priorities, including consultancies. Importantly, the plan would include the budget required to undertake the priority activities. The plan would be drafted by the WELS Regulator and submitted to WELSAC for consideration and agreement.

Once agreed by WELSAC, the strategic plan would be submitted to the Ministerial Council for consideration and approval. The Ministerial Council would be asked to delegate decision-making power to WELSAC in relation to the priorities in the three-year plan, including WELS products, standards and minimum WES matters.

WELSAC would provide an annual report to the Ministerial Council on the performance and outcomes of the scheme against the approved strategic plan, including approval for any revisions to the plan arising from the lessons of experience and changes in expectations.

The opportunity to jointly develop the three-year plan is an appropriate vehicle by which states and territories can engage in the management of the scheme and agree on a budget and their funding contributions. Engagement by states and territories in strategic planning and budgeting for WELS may prompt jurisdictions to review their expenditures on water efficiency programs more generally as part of their decision about how to fund their contribution to WELS.

Empowering WELSAC in this way would mean that state and territory representation needs to be suitable. A number of stakeholders have made the point that more technical representation is required on WELSAC. It is true that much of what is covered by the scheme is technical. However, the core work of developing the strategic plan will be to set policy priorities. For this reason, the usual model of a whole-of-government representative, with an internal consultation process with relevant experts, is preferred. However, given the new role of WELSAC being recommended here, governments should review their representation arrangements to ensure representatives have the delegated authority required for the new WELSAC role. The New Zealand Government should retain its observer membership of WELSAC.

Elsewhere, the Review Report recommends a change to organisational responsibilities, including WELS registration and compliance for plumbing products becoming the responsibility of the body responsible for WaterMark certification (see Recommendation 4.2). If this recommendation is adopted, then a representative of the WaterMark body should join WELSAC as an observer.

Finally, if WELSAC were empowered, then it would be good to signal this by removing the word “Advisory” from its name, and giving it a new, more appropriate name, such as the WELS Officials Group.

It is recommended that:

- 1.1 (i) WELSAC develop and agree to a three-year strategic plan and budget for approval by the Ministerial Council. The strategic plan would set out the priority activities for WELS. It would also seek Ministerial Council approval of delegated decision-making authority to WELSAC in relation to specified matters in the plan; and
(ii) WELSAC provide annual reports to the Ministerial Council on outcomes against the three-year plan, including recommendations for any revisions to the plan.
- 1.2 Governments review their representation on WELSAC to ensure representatives have the delegated authority required for the new WELSAC responsibility of developing and managing the three-year strategic plan.
- 1.3 WELSAC be renamed the WELS Officials Group to reflect its new responsibility for the three-year strategic plan and budget.
- 1.4 A representative of the WaterMark certification body be appointed as an observer member of WELSAC (if the WELS plumbing responsibilities are transferred to the WaterMark certification body – see Recommendation 4.2).

Stakeholder Engagement

While two open-invitation stakeholder forums have been conducted since the scheme’s inception, there is no standing stakeholder advisory group. There is an irony about this, as the WELS label describes WELS as a “joint government and industry program”.

There is considerable stakeholder dissatisfaction about the absence of any standing mechanism for stakeholder engagement. Schemes that require active working relations with stakeholders do benefit from having such a process. It would provide a standing forum in which stakeholder views and experience of the scheme could be communicated, as well as provide an opportunity for the WELS Regulator and WELSAC to seek the views of stakeholders on proposals.

A successful stakeholder process requires four things: it needs to be clear that the role is advisory and not decision-making; concrete tasks; clarity about the process by which stakeholder views are considered; and the right size and membership mix – big enough to be representative of the range of stakeholder perspectives, and small enough to be able to come to clear views efficiently.

A WELS Advisory Group (WELSAg) needs to be established to advise WELSAC and the Ministerial Council on the scheme, including:

- The three-year strategic plan
- Products and minimum WES
- Communications
- Compliance

The core function of the Advisory Group would be to provide advice on the three-year strategic plan. An initial draft three-year strategic plan would be provided by WELSAC to WELSAg for comment early in the plan's development process. The chairman of the Advisory Group would attend a meeting of WELSAC to present the Advisory Group's views on the draft plan. Once WELSAC agrees on the draft strategic plan for submission to the Ministerial Council, this draft would be provided to WELSAg for comments. WELSAg's comments would be provided to the Ministerial Council along with the three-year strategic plan. So ministers would know WELSAg's views on the plan when they consider the plan submitted by WELSAC.

It is suggested that WELSAg comprise up to 10 members, from stakeholder groups such as the Water Services Association of Australia (WSAA), Consumer Electronics Suppliers Association (CESA), Plumbing Products Industry Group (PPI), Australian Consumers Association (ACA), International Association of Plumbing and Mechanical Officials Oceania (IAPMO), National Plumbing Regulators Forum (NPRF), Plumbing Trades Employees Union (PTEU), as well as individual technical and water demand management experts. As much as possible, members should be representative of the range of stakeholder interests. This applies particularly to industry – coverage will be required of small and large firms, retailers, manufacturers, importers, plumbing products and white goods. It would also be useful to have one or two members with specific technical expertise. A member of WELSAC should be on the Advisory Group in an ex-officio capacity. The group should be chaired by a stakeholder. Secretariat support to the Advisory Group would need to be provided by the WELS Regulator.

WELSAg should be appointed by the Commonwealth Minister, following consultation with states and territories.

It is recommended that:

- 1.5 (i) A WELS Advisory Group of stakeholders be established to advise WELSAC and the Ministerial Council.
- The Advisory Group would:
- (ii) provide comments to the Ministerial Council on the draft three-year strategic plan;
 - (iii) comprise up to 10 members, and be chaired by a stakeholder member; and
 - (iv) be appointed by the Commonwealth Minister, after consultation with states and territories.
 - (v) The chair of the WELS Advisory Group would attend part of the WELSAC meetings to present the Advisory Group's views on the draft three-year strategic plan.

2. Objects of the Act

The objects of the Act are:

- 1) to conserve water supplies by reducing water consumption;
- 2) to provide information for purchasers of water-use and water-saving products; and
- 3) to promote the adoption of efficient and effective water-use and water-saving technologies (s3).

The Act seeks principally to achieve these objects by prescribing national water efficiency labelling requirements and minimum efficiency standards.

In recent years, WELS rating and standards have come to be used in ways that were not contemplated by the Act. First, as already noted, state and territory planning frameworks have sought to address water conservation by prescribing water efficiency standards for new residential and non-residential buildings. This is done by reference to the WELS ratings of appliances and fittings. Second, rebate programs offered by state and territory governments for the purchase of products reference WELS ratings.

The reference to WELS ratings by rebate programs is a straightforward use of WELS information and standards. What the rebate programs illustrate is the value to state and territory governments of the WELS Scheme. There is no need to change the objects of the Act on this basis.

In relation to the use of WELS ratings for prescribing water efficiency of buildings, the question is whether the present WELS approach of individual product ratings is appropriate for prescribing the water efficiency performance of a building. If not, is a holistic method of rating, which takes account of the interdependence between the water efficiency of appliances and fittings required? Some planning frameworks (such as NSW BASIX) try to address the interdependence.

A study could be undertaken to assess the extent of interdependence in the performance of appliances and the impact this has on their water efficiency. If the interdependence is found to be significant, then the next step would be to investigate a methodology for a holistic rating. However, this would be more appropriately addressed in the second three-year plan. If a study is undertaken, it should have regard to any work being done under the auspices of other forums, such as the Building Ministers Council.

Prescriptions about building performance are the responsibility of states and territories. It is a matter for states and territories to decide how best to use WELS ratings for these purposes, and not the

WELS Scheme. There may need to be differences between jurisdictions in this regard, to reflect the specific needs and circumstances of each jurisdiction. In any event, individual product ratings will still be needed for new and replacement purchases of WELS products.

The current objects of the Act appropriately underpin and guide WELS as a consumer information and standards scheme. Accordingly, the Review has concluded that no change is required to the objects of the Act.

It is recommended that:

- 2.1 No changes be made to the objects of the Act.

3. WELS standards

The WELS Standard sets out the criteria for rating products in relation to water efficiency and prescribes the way information about such ratings and water use is to be presented on a WELS label. The standard may also specify minimum water efficiency standards that a WELS product must meet. Currently there is only one minimum standard, which is for toilets. This standard predates the scheme.

The WELS Standard is set by reference to the Australian Standard: *AS/NZS 6400: 2005 Water efficient products - Rating and labelling*. A Standards Australia Committee, WS-032, maintains AS/NZS6400. The Standard covers all WELS products – white goods and plumbing products. The committee has 36 voting members and one ex-officio member, and includes manufacturer, industry association, water utility, consumer, DEWHA and state government representation. Decisions about the Standard are made by consensus. When changes are made to AS/NZS 6400, the Minister may make a Determination to call up the revisions.

Many stakeholders commented on the appropriateness of the Standards Australia process for standard setting. There is a concern that the Standards Australia process is not working well and other ways of setting standards should be considered. These concerns include: that the process is unduly slow and complex; that it is vulnerable to conflicts of interest for committee members; and that the user pays funding model is inappropriate.

Another method for developing standards would be for DEWHA (perhaps assisted by consultants) to write the standards, and for the Minister to determine them after consultation. This could be augmented with the additional step of vetting a draft standard via a consultative committee of experts and stakeholders.

On balance, the Review has concluded that it is preferable to retain the existing Standards Australia process. There are four reasons for this view: the costs of the change would be substantial; there is a likelihood that the new process would be very similar to that which it replaced; Standards Australia is a strong brand, while a new process would not be widely recognised; and some changes to the Standards Australia process should make a substantial difference.

The Standards Australia process could be improved by:

- Adopting international standards as much as possible. Although there may be local issues that Australian standards need to address, there has been a tendency in Australia's regulatory

history to overstate these, and this should be avoided. Australia depends heavily on imports for white goods, sanitary ware and plumbing products, and is a small market for overseas producers. If our standards move too far out of line with overseas standards, products may be withdrawn from the Australian market as manufacturers may not have sufficient incentive to meet Australian WELS requirements.

- Creating a plumbing products sub-committee and a white goods sub-committee under WS-032. This would generate greater common interest and purpose to each sub-committee than is possible within WS-032. WS-032 would meet only as required to consider over-arching matters.
- Assigning a strong role to committee chairs to address potential conflicts of interest and expedite the committee process.
- The WELS Regulator taking a more active role on the committees to drive the process and providing increased resources and funding to expedite the process. The amount of funding and its purpose would be determined in the three-year strategic plan.

It is recommended that:

- 3.1 The Standards Australia process be retained for setting WELS Standards.
- 3.2 The WELS Regulator more actively manage the Standards Australia process, including providing increased resources and funding as determined in the three-year strategic plan.

If there is a change in the standard adopted by WELS, retailers, importers and manufacturers may be left with stock that does not comply with the new standard. Such stock could not legally be sold. This would be unfair to industry. A way to address this issue would be to provide manufacturers, importers and retailers with a period of notice for a change in standards and allow the sale of any remaining stock held at the time of a change to a standard.

Such a provision arguably exists in s 30 (3) of the Act. However, at best this section only implicitly makes such a provision. So far, whether the Act does have such a provision has not mattered, as there have been no significant changes to standards. However, in a re-activated WELS, there may be changes to standards or new standards introduced. Therefore, it would be desirable that the Act is clear about this.

It is recommended that:

- 3.3 A clause be added to the Act:
 - (i) By which manufacturers, importers, wholesalers and retailers be given a period of notice of a change in standards or a new standard; and
 - (ii) To allow the sale of any remaining stock they may hold when a change of standards or new standard takes effect.

4. WELS administration

The Department of the Environment, Water, Heritage and the Arts (DEWHA) administers the scheme on behalf of all governments.

There are five main activities in the administration of the WELS Scheme. These are:

- Registration of products and maintaining a scheme product database;
- Compliance and enforcement undertaken by monitoring compliance with the scheme and gathering evidence in relation to potential non-compliance matters;
- Standards and legislation by overseeing the drafting of legislation and determinations and advising the Minister on these matters. Staff also represent the scheme on Standards Australia committees and support WELSAC;
- Communications by developing and implementing activities that raise awareness of WELS and compliance obligations; and
- WELS Expansion by overseeing a program of work to investigate new minimum WES and new products to be brought into the scheme.

The WELS administration reports to an Assistant Secretary within the Project Management and Governance Branch of the Water Group within DEWHA. Twelve staff are responsible for registration, compliance and enforcement, standards and legislation, and communications functions. An additional three staff focus on the WELS Expansion program of work, which is funded separately by the Commonwealth until 30 June 2011.

As already noted, the E₃ Program is the energy counterpart of the WELS Scheme. The administration of E₃ had been part of DEWHA, albeit within another Division of the department. In March 2010, E₃ was transferred to the Appliance Energy Efficiency Branch of the Department of Climate Change and Energy Efficiency (DCCEE). It has around 40 staff.

WELS and E₃ operate in parallel but separately. From a public policy perspective, WELS and E₃ are the same kinds of scheme. Both provide information to consumers about product performance and set minimum performance standards. Both convey two kinds of information, a star rating of efficiency performance and a physical measure of consumption. Clothes washers and dishwashers are subject to WELS and E₃.

Beyond this, the two schemes have much in common. Both reference an Australian Standard for prescribing standards and labelling. For both schemes, this information is provided by a label affixed to the product at the point of sale. The labels sit next to each other on clothes washers and dishwashers. For both schemes, new products and standards must be subject to a Regulation Impact Statement process.

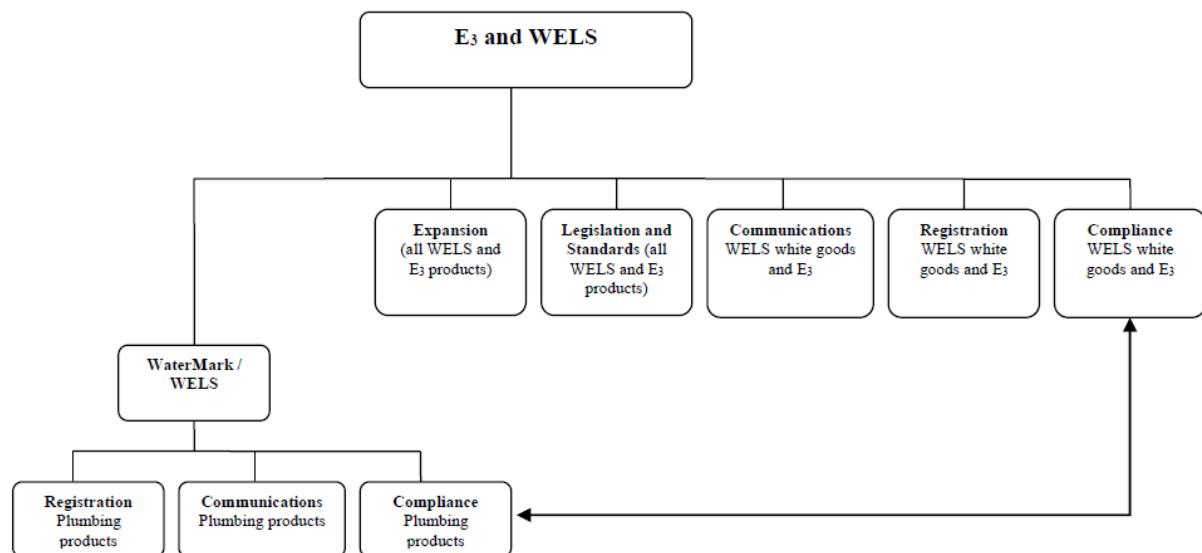
Both schemes conduct point-of-sale compliance checks on product labelling. WELS has only a limited check testing program, whereas E₃ has an active product check testing program, including for clothes washers and dishwashers. Under the Australian Standard testing requirements for E₃, the compliance test includes water efficiency performance (AS/NZS 2040.2:2005 for clothes washers and AS/NZS 2007.2:2005 for dishwashers).

The administration of WELS for taps, showers, toilets, urinals and flow controllers interfaces with the WaterMark Certification Scheme under which all plumbing products sold in Australia need to have WaterMark certification that they are fit for purpose. WaterMark certification is presently administered by Standards Australia. However, Standards Australia has indicated its desire to divest itself of the role by December 2010.

WELS rating is in relation to water efficiency, and not product quality. So WELS rated products need not be WaterMark certified. There has been considerable concern expressed about this, as it means a product can be WELS rated, but not WaterMark certified that it is fit for purpose. A legislative amendment to address this was introduced to the Commonwealth Parliament on 16 June 2010. The amendment would enable the Minister to determine third party certification, such as WaterMark, as a prerequisite for WELS Scheme registration.

The question of who should administer WaterMark is being examined by the National Construction Code Working Group. The Working Group has been established under a COAG process, to report to the Building Ministers' Forum. The Working Group is also to recommend a new, single National Construction Code by merging the Building Code of Australia and the Plumbing Code of Australia. The new National Construction Code is expected to be published in May 2011.

The Review has considered the merger of the administration of WELS and E₃ and allocating some WELS functions for plumbing products to the body that will be responsible for WaterMark certification. The WELS' registration, compliance and communications functions for plumbing products could be transferred to the WaterMark body. A merged WELS and E₃ administration would have responsibility for the overarching WELS responsibilities for the expansion work of investigating new products and standards and the legislation and policy work, as well as registration, compliance and communications functions for white goods. Such an administrative arrangement is shown below.



The premise to these arrangements is that like should go with like. This would yield administrative economies. There would also be the intangible synergy benefits of the cross-fertilisation of experience between the two schemes. In particular, the current E₃ work on proposed national legislation for the energy scheme could benefit from the WELS Scheme experience, which has had national legislation from the beginning. Finally, it would make differences between the schemes explicit and encourage a rationalisation between them.

Specifically, there would be the following benefits for the administration of WELS and E₃ for white goods that are or could be covered by both schemes:

- As already noted, under the Australian Standard testing requirements for E₃, the compliance test includes water efficiency performance. If WELS and E₃ were merged, the marginal cost of a

WELS check testing program would be very small, and much less than it would be if the two check testing programs operated separately.

- Point of sale compliance checking could be conducted jointly for WELS and E₃.
- Communications could be undertaken jointly. Not only would this save costs, but it would also present the opportunity to better explain the two schemes to consumers through a single communications program.
- Likewise, retailer training could be done as a single package.
- There may be scope to rationalise representation on Standards Australia committees.
- There would be the intangible benefit for both schemes of the greater bureaucratic prominence arising from being administered by a larger group.
- The administration of some products like combined clothes washer/dryers would be simpler.
- Only one Regulation Impact Statement, rather than two, would be required for new products that are both energy and water using (for example, hot water services and evaporative air conditioners).
- E₃ has had a co-operation agreement with the ACCC in relation to compliance. WELS would benefit from being part of this agreement (see Recommendation 7.4).

Industry would gain from a merger of the two administrations. Costs incurred by the manufacturers and importers of products covered by both schemes would be lower, as there would be a single point of contact and registration. Applications for energy and water efficiency registration are almost identical: both require test reports, a sample label and registration fee. Presumably, creating a single registration form would be relatively straightforward, and would reduce application and registration processing times and costs.

Any administrative change in relation to WELS and E₃ is now more difficult as they are in separate departments. However, the case for a merger is strong on public policy, cost and quality of administration grounds. While restructures of this kind are much easier said than done, the case deserves serious consideration.

The management of plumbing products presents particular difficulties to the WELS administration. It requires considerable specialist knowledge and tends to involve dealings with a large number of small companies. Of the 13,900 WELS registrations (at 30 June 2010), 6,925 were taps and 3,309 were showers (by comparison, there were 534 clothes washers and 807 dishwashers).

Also on the basis of putting like with like, WELS' functions for plumbing products would be more effectively performed by a specialist plumbing product body. This would have benefits for the administration of WELS for plumbing products and for industry, which would have to deal with only one body for both WELS and WaterMark. A single education program could be developed for WaterMark and WELS. The logical body is that which will be responsible for WaterMark certification. This case would be even more compelling once the Act is amended to make WaterMark certification a prerequisite for a WELS rating.

The proposed model, presented in the above diagram, envisages three WELS functions being delegated to the WaterMark body, namely registration, compliance and communications. All policy matters would remain the responsibility of the WELS Regulator.

Stakeholders have expressed considerable dissatisfaction with the perceived high turnover of WELS staff. A high staff turnover does potentially limit staff subject matter expertise and undermines the continuity of relationships with stakeholders, administration and issue management. Merging WELS and E₃ would not directly address the problem of high turnover. Indeed, initially, it may add to it, as some staff may not be comfortable with the change. However, a larger administrative group in the longer term may reduce turnover by offering more internal prospects for promotion. More particularly, a larger group may increase the continuity of knowledge by having stronger systems, including records management and staff training.

It is recommended that:

- 4.1 The WELS administration be merged with the E₃ administration, and have responsibility for all WELS policy matters and the administration of WELS white goods to yield economies and synergies, particularly in relation to registration and compliance, investigating new products and standards, and communications and training programs.
- 4.2 WELS' registration, compliance and communications functions for plumbing products be transferred to the body responsible for WaterMark certification.

5. Registration

All WELS products must be registered. An application for registration is generally made by the manufacturer for domestically produced products and by the importer for overseas produced products. Manufacturers and importers apply online to the WELS administration in DEWHA for registration.

An application for registration must provide:

- Test report(s) showing compliance with the WELS standard;
- A sample label; and
- A registration fee of \$1500 for a primary registration. Later registrations that are considered “like products” can be registered free by being added to the initial primary registration. A like product is one with the same manufacturer, brand name and water efficiency. The like products are referred to as a “family of models”.

At 30 June 2010, the scheme had 3,895 registrations, covering the 13,900 product models. These registrations relate to 565 organisations each identified by a unique licence number.

Around half of all new registrations are free of charge under the family-of-models provision. The “like product” interpretation of the family of models appears to have been developed and adopted informally, but it is significant. Registration has imposed a much higher volume of work than was anticipated when the scheme was established, but has yielded lower revenues than was expected due to the liberal interpretation of the family-of- models provision. The interpretation has also made

compliance enforcement more difficult, because a single registration covers a number of products and this makes tracing a product to the registration database difficult.

Under E₃, the family-of-models provision is limited to a narrow range of model variants. Thus, for a refrigerator, the provision is limited to left-hand and right-hand door variants and enamel and stainless steel finishes. The same approach should be adopted for WELS registrations. It would not require an amendment to the Act.

It is recommended that:

- 5.1 The scope for registration under the family-of-models provision be limited to cosmetic variants of models.

It is a relatively common practice for white goods to be re-branded, by which an otherwise identical product is sold under a number of different brand names. At present, all re-branded products have the same licence number. This makes it difficult to link a product to the registration database for compliance checking purposes.

Under E₃, a re-branded product requires a new registration. The same policy should apply for WELS products.

It is recommended that:

- 5.2 A new registration be required for each re-branded model.

Once an application is accepted, the product is not formally registered until a notice appears in the *Commonwealth of Australia Gazette*. Gazettal adds to delay and costs, without adding any benefit, given that after the Regulator's approval, the registration can be entered on the publicly accessible database. There are no grounds for retaining the Gazettal requirement.

It is recommended that:

- 5.3 The requirement for Gazettal to give effect to a new registration be removed.

The Act allows three months for consideration of an application. DEWHA advises that the average registration processing time is two to four weeks. There seems to be no need to change the time frame provided for in the Act.

The observation of the Review is that registration applications for white goods are progressed straightforwardly. However, registration of plumbing products can be more fraught. If Recommendation 4.2 is adopted, then plumbing products would move to a plumbing specialist body and registration could be conducted as part of the WaterMark certification process.

If the merger of the administration of WELS white goods and E₃ occurred, then current differences in registration requirements would need to be addressed, including the difference in registration fees of \$1500 for WELS and \$285 for E₃ and in the registration process (the issue of cost-reflective charging is addressed below). Currently, energy labelling applications are accepted by New South

Wales, South Australia, Victoria, Queensland and New Zealand. All states and territories accept any valid registration approval in another state.

WELS registration is for five years. If its purpose is to ensure registration details are current, then the requirement for the renewal of registration after five years is too long. The objective of ensuring registrations are current is important to the effectiveness of the scheme. However, it would be better achieved by an annual request to registrants to confirm their registration details or update if necessary. If registrants advised the product was no longer being supplied, then registration would terminate and be archived on the registration data base. A grandfather provision would be required for any unsold stock that remained at this time.

An arrangement would need to be developed within the WELS product database for dealing with products that are removed from registration because they are no longer being manufactured. Information about these products should still be available, both while unsold stock remains and for later reference purposes, for instance, in relation to sustainability declarations.

It is recommended that:

- 5.4 The WELS Regulator send an annual registration check to registration holders to verify current registration data or update data as necessary, and the five-year registration renewal requirement be removed from the Act.

Presently, voluntary registration is available for flow controllers. However, this adds to the complexity of the administrative load for the WELS Regulator. WELS is a mandatory scheme for identified products; voluntary registration would be more appropriately dealt in the existing voluntary scheme, Smart Approved WaterMark. It would be useful to address the arrangements to assist this matter in the proposed memorandum of understanding between WELS and Smart-Approved WaterMark (see recommendation 12.2).

It is recommended that:

- 5.5 The provision for voluntary registration be removed from the Act.

6. Labelling

A WELS label must be displayed at the point of supply of the product. The form and content of the label are prescribed by AS/NZS 6400. The label is typically a paper one, glued to the appliance. It shows the star rating out of six stars and the volumetric consumption or flow rate of water.

The discussion paper canvassed some options for changing the label, but these gathered little support in submissions or at the roundtables. Based on stakeholder advice, the WELS label appears to be relatively well-recognised by consumers. Displaying additional information, such as whole-of-life costs, was also raised in the discussion paper. However, as with changing the label, any suggestions for changes in this regard drew little interest and even less support. Part of the problem would be agreeing what additional information should be displayed and how it would be calculated. For the time being there are higher priorities to address and continuity benefits of leaving these matters alone.

There are, however, some puzzling differences between the WELS label on white goods and that on plumbing products, which relate to compliance enforcement rather than consumer information. The present requirements for WELS labels prescribed by the Australian Standards are shown in the following table (Table 1).

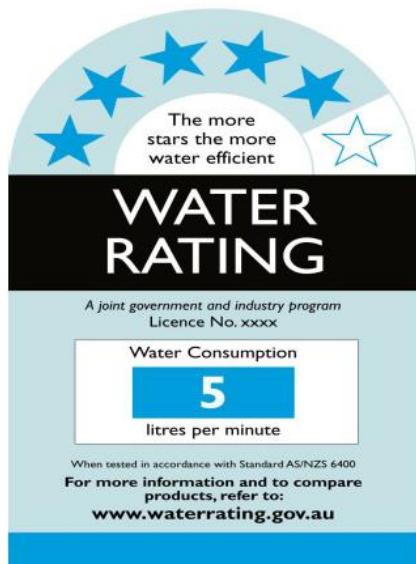
Table 1: Requirements for WELS labels

WELS labels	Plumbing products Shower	Plumbing products Toilet	Plumbing products Urinal	Plumbing products Tap + flow controller	White goods Dishwasher	White goods Clothes Washer
Brand	NO	NO	NO	NO	YES	YES
Model name/no.	NO	NO	NO	NO	YES	YES
Capacity	N/A	N/A	N/A	N/A	Place settings	kg capacity
Licence no.	YES	YES	YES	YES	NO	NO
Star rating	YES	YES	YES	YES	YES	YES
Water consumption	L/min	L/full flush L/half flush L/average flush	L/flush/stall	L/minute	L/wash	L/wash

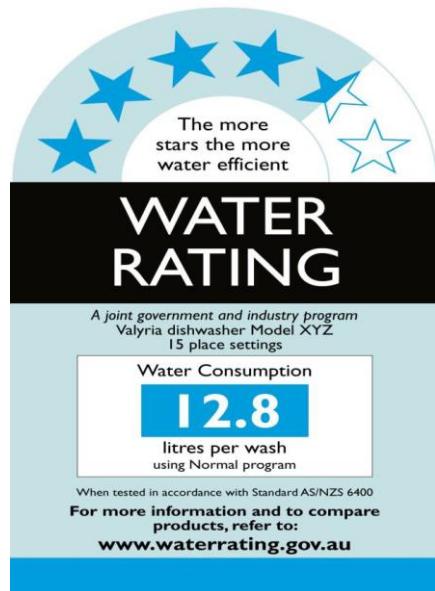
Source: AS/NZS 6400 (Annex B, pages 24-41)

Thus, the labels present somewhat different information, as shown below.

WELS plumbing label (tap ware)



WELS electrical goods label (dishwasher)



WELS labels for plumbing products show a licence number for the entity registering the product, but not the registration number of the product. It would make more sense to require that the label display the registration number of the product. This is the one, unique means of identifying the product. This requirement would not add significantly to costs for industry but would make the label more effective as an identifier of the product, particularly if recommendations to tighten the family-of-models provision (5.1) and require registration for re-branding (5.2) are adopted. The licence number would no longer be required.

If WaterMark certification and WELS registration were the responsibility of one body, in time there could be a single registration number for WaterMark and WELS.

It is recommended that:

- 6.1 Consistent labelling across all WELS products be adopted, and that labels show the brand, model name and number, and WELS registration number, as well as star rating and water efficiency information.

One jurisdiction requires a Sustainability Declaration for, among other things, the water efficiency of appliances. Other jurisdictions may in future adopt a similar requirement. At present, this information can be hard to find, especially if the WELS label has been removed in the case of white goods. It almost always will be difficult for plumbing products. It has been suggested that this be addressed by requiring permanent marking on products. However, adding further information to manufacturers' plates may not be effective for plumbing products, as the problem is the lack of visibility of any marking. A cheaper and more appropriate alternative would be to ensure that the WELS product database is accurate and archived material for superseded products can be easily accessed, so that information could be found on the registration database.

More appliances, particularly clothes washers, are getting near the maximum number of stars, so the stars are less helpful as a measure of comparative performance. A solution to this would be to add extra stars to the current six-star rating metric. This is the path adopted by E₃. The alternative would

be to define a new method of calculating the star rating. It would probably be undesirable for the two schemes to adopt different approaches. This matter could be addressed once the merger of WELS and E₃ is implemented.

7. Compliance

Compliance has presented considerable difficulties for the effective delivery of the WELS Scheme. The stakeholder perception is that compliance is inadequate and misdirected to point-of-sale offences and that there is insufficient oversight of whether product performance is accurately recorded on labels.

There is a basis to these perceptions. There have been very few compliance enforcement actions. No Penalty Infringement Notices have ever been issued. There have been no prosecutions. One matter is being considered for prosecution or alternative enforcement action. The focus of compliance has tended to be on retailers. There is only very limited check testing of ratings and water-use information on labels.

Significant changes are required here. The accuracy of water efficiency information on labels is critical to the credibility and effectiveness of the scheme. If a perception of limited compliance enforcement action were to take hold in industry, then competitive pressure between firms could lead to undesirable outcomes for the scheme.

The scheme offences are criminal. Because the sanctions are criminal - fines and imprisonment - successful compliance action requires a high burden and standard of proof. The alleged offence must be proven beyond reasonable doubt. From a practical point of view, the required standard of proof requires vigilance in the conduct of investigations and gathering evidence, and imposes significant resource burdens. In addition, the discretion to prosecute lies outside the WELS Regulator.

The provision for Penalty Infringement Notices potentially alleviates some of these difficulties, but encounters the same difficulties for gathering evidence to prove the offences to the necessary standard.

The scheme provides for the limited civil sanctions of enforceable undertakings (which require the co-operation of the offender) and injunctions. No provision is made for administrative sanctions, such as suspension or revocation of registration. Some consumer protection is provided through the *Trade Practices Act 1974* and state fair trading legislation. The WELS Regulator has no power to achieve compensation for consumers.

Offences in relation to the WELS Scheme are commercial matters. They relate to the conduct of business by retailers, manufacturers and importers. Presumably, offences would be driven by the prospect of commercial advantage. The consequence of the offence would be that consumers buy a water-using product that is not, in relation to its water efficiency, what they thought it was.

In this context, it would be more appropriate to establish WELS offences as civil matters. This would mean that offences would need to be established on the balance of probabilities and responsibility for prosecution would remain within the portfolio agency. As civil contraventions, the sanctions would better reflect the nature of an offence. As the offences are commercial, so the sanctions should be commercial. Thus, the administrative sanctions of public apologies, requiring new,

corrected labels, suspension and deregistration of products, product recall and compensation of consumers should be added.

It is recommended that:

- 7.1 Offences be established as both civil and criminal penalty provisions.
- 7.2 New civil sanctions be established, including public apologies, a requirement for new, corrected labels, suspension and deregistration of products and family of models, product recall and compensation to consumers.

Under the Act, it is an offence to supply a WELS product which:

- is not registered or which is registered but not WELS labelled;
- is a registered product but does not meet a minimum water efficiency requirement or minimum general performance requirements;
- uses a WELS standard or information included in a WELS standard, in a way that is inconsistent with the standard; or
- uses information in the supply of a WELS product inconsistent with the information in the applicable standard for the product.

The enforcement experience with these offences has been fraught. For one thing, it is not presently an offence to supply a WELS product that is unlabelled, if the product is not registered. In all cases, despite the responsibility to register being with importers and manufacturers, the burden of proving beyond a reasonable doubt that the product is registered or not registered lies with the prosecution. It would help compliance activity if offences were clearly linked to those in the product supply chain who are best able to comply. This means assigning the responsibility for registration to importers and manufacturers, and assigning to retailers the responsibility for selling or offering for sale products with WELS labels.

It is recommended that:

- 7.3 the following offences be established:
 - (i) sell or offer for sale an unlabelled WELS product (a retailer responsibility);
 - (ii) sell or offer for sale an unregistered WELS product, with the onus of proof to be on the supplier to show that the product is registered (a manufacturer or importer responsibility);
 - (iii) sell or offer to sell a WELS product with a WELS label containing false or misleading information (a manufacturer or importer responsibility); and
 - (iv) sell or offer to sell a WELS product that does not meet a required minimum water efficiency standard (a manufacturer or importer responsibility).

Where the WELS Regulator identifies instances of conduct it concludes may be considered misleading or deceptive under the *Trade Practices Act 1974*, these matters could be referred to the Australian Competition and Consumer Commission (ACCC) for assessment against their *Compliance and Enforcement Policy*. It would be useful to formalise this relationship through a co-operation agreement between WELS and the ACCC. This kind of agreement was struck between the ACCC and

the Australian Greenhouse Office for E₃ in March 2000. In the event of a merger of the administrations of WELS and E₃, settling an agreement for WELS should be relatively straightforward.

It is recommended that:

- 7.4 The WELS Regulator and the Australian Competition and Consumer Commission settle a co-operation agreement for referring instances of misleading conduct which could be covered by the *Trade Practices Act 1974*.

Compliance efforts have been limited by resource constraints. The Regulation Impact Statement on the *Proposed National System of Mandatory Water Efficiency Labelling for Selected Products* (2004) allocated \$100,000 per annum to compliance during the scheme's first five years. Although the Australian Government has contributed additional funding to compliance activity, funding for compliance remains limited. The key consequence of this level of resources is that the existing check testing program is insufficient.

There are some significant differences with the compliance arrangements under the E₃ Program. Around 120 E₃ compliance check tests have been conducted each year up to 2007/08. This number is expected to rise significantly with the tripling of the testing budget in 2009/10. The testing regime is targeted at products for which there is a reason to believe there is a compliance issue. As a result of compliance testing, there have been 56 de-registrations between 2005/06 and 2007/08.

The most efficient way of conducting WELS check testing for white goods would be to dovetail with the existing E₃ Program. As noted above, under the Australian Standard testing requirements for E₃, the compliance test includes water efficiency performance (AS/NZS 2040.2:2005 for clothes washers and AS/NZS 2007.2:2005 for dishwashers). If WELS and E₃ worked together, the marginal cost of a WELS check testing program would be very small.

If WELS plumbing products are moved to WaterMark, then compliance for plumbing products could be done as part of the WaterMark certification compliance of third party ISO Type 5 product certification. This includes on-going surveillance by the Conformity Assessment Body. Type 5 certification is detailed in *ISO/IEC Guide 67 Conformity assessment – Fundamentals of product certification*. Type 5 certification relates not only to the product, but also to the supplier and their facilities. This process would need to be assessed for WELS purposes as part of the agreement that underpinned the assignment of certain WELS responsibilities for plumbing products to the WaterMark body.

It is recommended that:

- 7.5 (i) A check testing program be established for white goods; and
(ii) Noting that compliance testing for plumbing products would be covered by ISO Type 5 certification in the event that plumbing products were transferred to the WaterMark certification body, ISO Type 5 should be reviewed for WELS compliance purposes.

A strongly recurring concern of stakeholders was the lack of follow-up responses to compliance complaints made to the WELS administration. To some extent, this can be addressed through the recommended WELSAAG. A standing agenda item for the Advisory Group could be a report on

compliance complaints and follow-up actions. The report should be in a form suitable for public dissemination, so stakeholders could use it in their communications. It should also be part of the more general WELS communications. In addition, a protocol needs to be developed for staff to follow in relation to responding to complaints. WELSAG should be consulted during the development of the protocol.

It is not clear if the Act requires product advertising to display the WELS rating. In any event, there is a perception that advertising is not being monitored by the WELS Regulator.

On policy grounds, there is an argument that advertising should require display of the WELS information. The argument is that WELS is a consumer information scheme, so WELS product information should be provided whenever the product is shown to consumers.

On the other hand, there are three reasons not to require advertising to display WELS information. First, it appears that consumers use advertising mainly to gain information about product availability and price rather than to obtain information about water efficiency. Second, no other consumer standards and information schemes have a similar requirement (the only exception found during the course of this Review is the advertising of television programs and films); and third, compliance enforcement would consume considerable resources, especially given the volume of advertising and the rise of electronic forms of advertising, when there are higher compliance priorities, such as check testing.

On balance, the Review has concluded that advertising not be required to display WELS information about the product.

It is recommended that:

7.6 Advertising not be required to display WELS information.

The direct sale of imported appliances to commercial customers for property development projects makes compliance enforcement difficult. This is perhaps more of an issue for WaterMark than for WELS, so long as the WELS product does not have to meet a minimum WES. There is some anecdotal evidence of appliances that are not WaterMark compliant being imported for installation in new buildings. Where a property is offered with WELS products already installed by the developer, then the nexus between the sale of the product and the purchase decision by the consumer, on which WELS is premised, is broken. This is a matter for state and territory planning prescriptions, and building and plumbing compliance inspections.

One option for addressing this would be to introduce a customs declaration requirement to establish a database to track entry and check compliance. This would probably have to apply to all imported products. However, in the context of the tighter registration requirements recommended earlier (Recommendations 5.1 – 5.5), a more extensive compliance program, and the fact that establishing a customs declaration requirement would be a significant new project, the Review has concluded that it would be wise to monitor this matter once tighter registration and extensive compliance arrangements were in place, and only consider a new import measure if it appears that more needs to be done and other options are less attractive.

8. Communications

DEWHA undertakes a WELS communications program. The objective of the program is to raise awareness of the WELS Scheme to:

- Enable consumers to make more informed choices in relation to the water efficiency of products; and
- Achieve a high level of voluntary compliance among product suppliers, by raising awareness of their legal obligations and the process and penalties for non-compliance.

The focus of communications has been on the latter. Communications to consumers have been limited to some advertising in major metropolitan newspapers.

Implementation of the outcomes of the Review would be a good opportunity to launch a new communications program. It is suggested that a communications program be a key part of the first three-year strategic plan.

It would be useful to establish consumer focus groups, from which valuable information could be gained about the perceptions of consumers and the effectiveness of possible messages and media for WELS communications.

Although the WELSAAG will be an important mechanism for communicating to stakeholders, there should also be an industry communications program. The views of WELSAAG should be sought on this program when it is being developed.

As a consumer scheme, its effectiveness depends heavily on the consumer experience at the retailer. At present, there is no WELS training for retailers. Such training would assist retail sales staff to advise consumers on the meaning of the WELS label information. It would be desirable for the training program to cover WELS and E₃ programs.

It is recommended that:

- 8.1 A range of new communication activities be developed and implemented, including training programs for retail sales staff.

9. Product expansion and setting new Minimum Water Efficiency Standards

There is presently a very extensive program of work assessing additional products and new minimum WES. However, so far there have been no additional products or new minimum WES introduced over the five years of the scheme's life. Although undoubtedly the requirements of the RIS process are time consuming, it does seem these processes have taken longer than they should.

On 26 November 2006, EPHC agreed to work being undertaken to examine raising the minimum WES for toilets and introducing minimum WES for all other WELS products, and to investigate bringing additional products into WELS. Funding of \$2.6 million was obtained in 2007 from the Raising National Water Standards program to undertake this work over four years until 30 June 2011.

Three regulation impact statements (RIS) are underway. The first is on minimum WES for clothes washers, dishwashers and labelling of combined washer dryers. A Consultation RIS on this was

released for public comment in November 2008. The Decision RIS is expected to be submitted for EPHC consideration in July 2010.

The second is a Consultation RIS on minimum WES for showers, taps and urinals, and increasing the existing minimum WES for toilets. This RIS is expected to be released for public comment in the second half of 2010.

The third RIS is examining additional products for the scheme. They are evaporative air conditioners, instantaneous gas water heaters, hot water circulators and domestic irrigation controllers. Of these products, hot water circulators and domestic irrigation controllers have been found to be unsuitable for inclusion. Reports on the unsuitability of these two products were released in May 2010. A Consultation RIS on evaporative air conditioners and instantaneous gas water heaters is expected to be released in the second half of 2010.

There is no standing process by which new products can be proposed and assessed for inclusion into the scheme. There is a perception that this has meant there is no systematic examination of potential product expansion or new WES. The three-year strategic plan would be a way of explicitly and systematically considering which products should be considered for inclusion into the scheme. Particularly if resources continue to be severely limited, then the three-year plan would be very good way of determining priorities.

When considering water efficiency, a distinction can be drawn between those products that perform a particular service, which can be done using more or less water, and those where there is a fixed water requirement. Often, taps are required to deliver a volume of water, for example for cooking purposes, and so the water efficiency of the appliance is not relevant to water conservation.

Recent work by the Institute for Sustainable Futures (*Cost Effectiveness Analysis of WELS, 2008*) found that water savings from taps have been and will continue to be extremely small. Taps were forecast to provide 4 per cent of total water savings in 2010. This is compared to savings from showers (45 per cent), toilets and urinals (29 per cent), and washing machines and dishwashers (22 per cent). The study projected this trend to continue to 2020, with taps expected to provide 3 per cent of savings compared with showers (32 per cent), toilets and urinals (21 per cent) and washing machines and dishwashers (44 per cent) (ISF, 2008, p.31).

Given that plumbing products constitute the greatest administrative load in the scheme, it would be useful to examine the costs and benefits of removing the ratings requirement and prescribing only minimum WES for categories of plumbing products, as the way of driving appropriate water efficiency. This work should first look at tap ware.

Setting minimum WES could be a way of addressing the issues presented by zero-rated products. These generally provide very poor water efficiency, but can be offered for sale.

If investigation found that there were net benefits to prescribing minimum WES for certain products, and the assessment of WaterMark were combined with WELS for plumbing products, a single permanent mark on the product would then denote that it is WaterMark certified and meets the WELS minimum WES. The simplest approach may be to retain the existing WaterMark branding and use it to denote WaterMark certification and that the product meets the minimum WES as well.

It is recommended that:

- 9.1 A Regulation Impact Statement be undertaken to assess the cost and benefits of removing water efficiency ratings and in their place prescribing only a minimum Water Efficiency Standard (WES) for plumbing products, such as tap ware.

10. Cost recovery

WELS was established as a cost recoverable program, with registration fees set at a level that was to raise around 80 per cent of the scheme's funding. The remaining 20 per cent core costs were to be met by contributions from all governments.

The 2004 Cost Recovery Impact Statement (CRIS) estimated 1,255 new registrations in the first year of the scheme, with 190 new registrations in each of the following four years, yielding 2,015 registrations at the end of the first five years, and earning revenue of \$600,000 per year. Annual expenditure was estimated to be \$790,000. Of this, compliance monitoring was forecast to be \$60,000 and investigations and prosecutions \$40,000. Staffing was expected to be four Average Staffing Level positions, at an annual cost of \$440,000. Development of technical standards was estimated to be \$85,000 and database and website costs \$95,000.

Reflecting the 2004 CRIS, the 2005-06 Budget Paper estimated registration revenue of \$600,000 per annum, and total revenue of \$3.7 million, including state and territory contributions. The costs of running the scheme were estimated to be \$4.6 million over five years, for which there was then \$1 million of existing funding.

This is not the way things have worked out, as is shown starkly by comparing some of the key expenditures and revenues from the 2004 CRIS, the 2005-06 Budget and 2009-10 revenue and expenditure forecasts provided by the WELS Regulator (see Table 2).

Table 2: Comparison of Expenditures and Revenues

Expenditures and revenues	2004 Cost Recovery Impact Statement	2005/06 Budget	2009/10 WELS forecasts
Number of products registered (after 5 years)	2015	2060	13,900 (at 30 June)
Registration revenue	\$0.60 million pa	\$0.60 million pa	\$0.42 million
Compliance expenditure	\$0.10 million pa	Not available	\$0.15 million
Staffing costs	\$0.44 million pa	Not available	\$1.17 million
Total expenditure	\$0.79 million pa	\$0.92 million pa	\$2.22 million
Cost Recovery	80 per cent	80 per cent	20 per cent

Over the five years to 30 May 2010, registration fees have been \$3.05 million. Although this is very close to the 2005/06 Budget estimate of \$3.10 million, it has accrued from registering nearly 14,000 products, compared with the CRIS estimate of 2015. Nearly 7,000 taps have been registered, compared with the CRIS estimate of 480. Given that registering tap ware is typically very time-consuming, much more so than for white goods, this has imposed a considerably greater administrative load than was anticipated in estimating the cost of the scheme.

Expenditure for operating the scheme during the four years to 2008-09 has been \$7.50 million (not including the expenditure on the product expansion and minimum WES work, which was funded separately through the National Water Commission).

The combined state and territory contribution has been \$635,000 over the first five years (shares between states and territories are determined by the portion of population). The Australian Government has matched the state government contributions. The other source of funding has been NWC contributions of \$485,000 towards compliance. This has left a funding shortfall of approximately \$3.0 million, which has been met by the Australian Government.

Estimated expenditure for 2009-10 is \$2.22 million. Nearly half this cost was employee expenses of \$1.17 million. The next largest expenditure was \$0.36 million on consultants. Compliance inspections are \$0.15 million, communications \$0.25 million and legal standards work \$0.19 million. Eighty thousand dollars was contributed by the NWC. This leaves a funding gap of around \$1.72 million which will be met by the Australian Government.

By contrast, expenditure on the E₃ Program was \$10.3 million in 2008/09. Registration revenue was \$450,000, around 5 per cent of the budget. The difference in funding does not just reflect a greater responsibility. One measure of the difference in the scope of the schemes is the number of registrations. They are only about 50 per cent greater under E₃ than WELS – nearly 19,000 compared with around 13,700 under WELS - whereas funding for E₃ is nearly five times greater than it is for the WELS Scheme.

There are no arrangements in place for state and territory contributions after 30 June 2010. However, an interim funding arrangement for 2010-2011 is expected to be agreed by the EPHC when it next meets on 5 July 2010. The interim funding arrangement will enable the scheme's operation during 2010-2011, while the EPHC considers future arrangements.

The current WELS Scheme's funding strategy has not worked and is inappropriate. Insufficient revenue has been generated to fund even the relatively modest expenditures of the existing program.

Even with a tighter definition of the family-of-models provision and requiring a new registration for re-branding, and any savings from a merger of WELS and E₃ administrations, it is unlikely sufficient funds would be raised by the scheme to effectively undertake its responsibilities, particularly in relation to compliance, communications, and product expansion and new standards.

Two related questions need to be addressed in thinking about what an appropriate funding strategy for the scheme would be. Should it be cost recoverable, and if not, where should the funds come from?

The Australian Government Cost Recovery Guidelines (July 2005) provide that public goods be taxpayer funded. A public good is one for which provision of the good for one person means the good is available to everyone else at no additional cost. This is the case for WELS. Information is the principle output of the scheme. Once created, the WELS information is available to everyone at a very low marginal cost.

Public goods have two economic characteristics – consumption of the output is non-rivalrous (consumption by one person does not reduce consumption by others), and non-excludable (it is difficult to exclude anyone from benefiting from the good) (Department of Finance and Administration, 2005, p30). Consumption of WELS information is non-rivalrous and it is difficult to exclude people from the information at the point of sale. Therefore, the information output of the scheme is a public good.

On these grounds, the WELS Scheme information output would seem to meet the requirements for taxpayer funding set out in the guidelines. Under the guidelines, “[i]f an entity is proposing to recover less than the total cost of providing the goods/service on the grounds that full cost recovery would not be in line with policy objectives, Ministers must obtain the Finance Minister’s agreement” (p 20).

A request to the Minister for Finance would need to be underpinned by the commitment by all governments to meet the gap between registration income and the funding required for the producing and implementing the agreed strategic plan.

If the Minister for Finance agreed to the Minister’s application for the scheme to be taxpayer-funded, then registration fees should be set to recover only the costs of the registration process itself.

It is recommended that:

- 10.1 (i) The Commonwealth Minister seek agreement from the Minister for Finance that the scheme not be cost recoverable;
- (ii) If the Minister for Finance agrees, then the registration fee recover only the cost of the registration process; and
- (iii) All governments contribute the funds required to meet the gap between registration income and the funding required for the three-year strategic plan.

11. Trans-Tasman Mutual Recognition Arrangement

Under the Trans-Tasman Mutual Recognition Arrangement (TTMRA), goods manufactured in New Zealand and sold in Australia or imported into Australia from New Zealand, having been produced in a third country, need only comply with the standards or regulations applying in New Zealand.

New Zealand introduced its own WELS Scheme on 1 April 2010. The NZ WELS Scheme is part of the consumer information provisions of the Fair Trading Act.

The New Zealand Scheme differs from the Australian WELS in two ways: there is no product registration requirement and the Commerce Commission (the New Zealand equivalent of the Australian Competition and Consumer Commission) is responsible for compliance. Offences are criminal matters. Unlike the Australian WELS Scheme, under the New Zealand Fair Trading Act, companies can take action against other companies.

The different New Zealand WELS requirements seem unlikely to have an impact on white goods, as there is no manufacture of white goods in New Zealand and they are likely to be too expensive to re-import from New Zealand to Australia. In addition, the introduction of the New Zealand Scheme, when previously there was no WELS requirement, means that if anything, the advantage of New

Zealand producers has been reduced. So it seems unlikely there will be an adverse impact. However, these things can play out in unexpected ways, so it would be useful to monitor the matter.

It is recommended that:

- 11.1 WELSAC monitor the impact on the Australian market of the New Zealand WELS Scheme.

12. Relation to other schemes

There are three schemes in relation to water-using products – WELS, WaterMark and Smart Approved WaterMark.

Smart Approved WaterMark is a voluntary quality certification of water products and services not covered by WELS. It started with urban domestic outdoor products (such as pool covers), but now also includes commercial products and services (such as water-efficient car washes), and products inside the house not covered by WELS (such as hot water recirculation systems). This scheme is managed by the Water Services Association of Australia, Irrigation Australia, Nursery and Garden Industry Australia and the Australian Water Association. Certification is shown by a Smart Approved WaterMark label. Applications are assessed by an expert panel which meets every three months.

Having three programs that certify or rate water-using products and services - WELS, WaterMark and Smart Approved WaterMark - may make it difficult for the consumer to understand which scheme applies to which products and what they do or do not require.

There are some potential benefits to having both WELS and Smart-Approved WaterMark Schemes, which are not presently being realised. One of the complementarities between the two is that WELS is mandatory, while Smart-Approved WaterMark is voluntary. Smart-Approved WaterMark can serve as a staging point for products that later become part of the WELS Scheme. Addressing this and other issues about the relation between the two schemes requires the trigger of a formal process, such as settling a memorandum of understanding.

It is recommended that:

- 12.1 A single web portal be established to provide information about WELS, WaterMark and Smart-Approved WaterMark, which provides a link to the home pages for each of the three programs and links between their home pages.
- 12.2 WELS and Smart-Approved WaterMark agree to a Memorandum of Understanding to promote co-operation and complementary roles.

3 Conclusion

Although the Review's recommendations address the issues facing the scheme largely within the framework of the existing Act and IGA, a considerable allocation of effort and resources would still be required to implement them. Even with the required effort and resources, it can be difficult to manage many changes at once. In any event, there often are benefits to phased implementation of changes. Each stage of implementation can yield lessons that were not apparent at the beginning of the stage. These lessons improve the implementation of later stages.

In this context, the Review suggests that the priority implementation tasks should be for WELSAC to develop the first three-year strategic plan and budget, and for the WELSAG to be appointed. The plan should be targeted to being submitted to the next Ministerial Council meeting (scheduled for November 2010).

The strategic plan would include a program of work for implementing other aspects of the Review Report, such as legislative amendments for compliance matters, registration arrangements, new product and standards assessments and a check testing program.

Any administrative changes would require early decisions in-principle. However, their implementation could occur after the three-year strategic plan has been approved by the Ministerial Council. This would allow work to be on one thing at a time. It may also fit better with the priorities of E₃.

The effectiveness and pace of implementation would be assisted by establishing a small task group to do the work required. This task group should have a fixed term, and would benefit from having a seconded state or territory official, as well as Commonwealth officials.

Finally, it is noted that many of the Review's recommendations are interdependent. That is, the implementation of one recommendation would require that other recommendations also be implemented. This is particularly so for the recommendations in relation to registration fees, cost recovery and the funding of the scheme. Decisions made in response to the Review Report will need to have regard to this interdependence.

The current challenge for the WELS Scheme is to get a good policy working well. Looking to the future, beyond the first three-year plan, there will undoubtedly be new challenges. While the future is always unknowable, thinking about future challenges on the basis of current pressures suggests that the sustainable use of natural resources will be a community concern.

Sustainability always presents policy and practical problems around what it is and how it is best delivered. For WELS, the pressure for sustainability may mean the need to examine the relationship with other aspects of resource-use sustainability, particularly energy. The way forward could be to examine closer integration of schemes for water and energy efficiency. If the Review's recommendations are adopted, particularly those in relation to governance and administration, the WELS Scheme would be in a strong position to address the challenges of achieving the sustainability of natural resource use.

Attachments

Attachment A: Terms of reference

Purpose

An independent review of the operation of the Water Efficiency Labelling and Standards (WELS) scheme is required, consistent with Section 76 of the WELS Act 2005.

The review will examine the appropriateness, effectiveness and efficiency of the operation of the WELS Scheme to date, consider opportunities for improvement and make recommendations where considered appropriate. In particular, the review will:

Appropriateness

- Examine the objectives and underlying context of the existing WELS Scheme; and
- Assess the consistency and continued relevance of the WELS Scheme and relevant legislation in the context of current national water policy.

Effectiveness

- Examine progress and the contribution of the existing WELS Scheme toward its objectives and what has contributed to these outcomes;
- Consider and make recommendations if appropriate on any possible alternative operating arrangements for the WELS Scheme that may be more effective in achieving the scheme's objectives. Areas to consider may include (but should not be necessarily limited to) alternative arrangements for:
 - administration policies and processes, including those applying to registration, compliance and enforcement;
 - technical and testing requirements (to the scheme's current use of and interaction with Australian standards and Standards Australia committees);
 - funding and other resources;
 - stakeholder communication and consultation; and
- Explore any relevant linkages, lessons and opportunities (particularly for improving regulatory outcomes for both industry and consumers) with similar efficiency rating programs such as Australia's energy efficiency rating and labelling programs and make recommendations if appropriate.

Efficiency

- Assess whether funding for the operation of the scheme has been used efficiently and make recommendations on whether any possible alternative operating arrangements may achieve the scheme's objectives more efficiently. Areas to examine include:
 - administration policies and processes, including those applying to registration, compliance and enforcement;
 - the use of and interaction with Standards Australia and its committees;

- funding and other resources; and
- stakeholder communication and consultation.

In undertaking the review, consideration is also to be given to the current program of investigation into the possible inclusion of further products and minimum performance standards. Any potential additional operational issues, or longer term program requirements, arising from an expansion of the scheme are to be identified.

Intergovernmental agreement

In conjunction with the review of the operation of the WELS Scheme, States, Territories and the Australian Government will also be reviewing the WELS Intergovernmental Agreement (IGA). Accordingly, the review of the scheme is to also consider the operation of the IGA and, in the context of the scheme's review, provide any advice and recommendations thought appropriate regarding possible changes to the IGA.

Consultation

The review will invite public submissions and be conducted in consultation with the Minister, the Regulator, the WELS Advisory Committee and other relevant stakeholders, including consumer, environmental and industry groups considered appropriate.

Deliverables

A report, including executive summary and any relevant recommendations, will be provided to the Minister for Environment Protection, Heritage and the Arts by 30 June 2010.

The WELS Act requires a copy of the report to be tabled in each House of the Parliament within 15 sitting days of the day on which the report is given to the Minister.

Attachment B: List of submissions to the discussion paper

List	Submissions to the discussion paper
01	Doust Plumbing Products
02	Automatic Plumbing Pty Ltd
03	Sydney Water Corporation
04	Total Environment Centre
05	CHOICE
06	Individual
07	Dept of Environment and Resource Management and Queensland Water Commission
08	Yarra Valley Water
09	Confidential submission
10	Plumbing Trades Employees Union and The International Association of Plumbing and Mechanical Officials Oceana
11	Australian Water Association
12	Consumer Electronics Suppliers Association
13	Water Services Association of Australia
14	South East Water
15	Smart Approved WaterMark
16	Confidential submission
17	The Alternative Technology Association
18	Think Appliances Pty Ltd
19	Plumbing Connection
20	Aquamaker Australia
21	ELWA Pty Ltd
22	Plumbing Products Industry Group
23	Plumbing Industry Commission
24	Power and Water Corporation
25	David Allen
26	Hunter Water
27	Electrolux Home Products Pty Ltd
28	Master Plumbers and Mechanical Services Association of Australia

Attachment C: References

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