

A I T H E R

2015 WELS REVIEW

Independent Review of the Water Efficiency Labelling and Standards
(WELS) Scheme

Discussion Paper

December 2014

Contents

1	Introduction	1
1.1	About the 2015 Review	1
1.2	Discussion paper	1
1.3	Review timetable	3
2	The Water Efficiency Labelling and Standards Scheme	4
2.1	Background	4
2.2	Objectives	4
2.3	Administration and operation	4
2.4	2010 Independent Review	6
2.5	Key changes to the Scheme since 2010	6
3	Focus areas of the 2015 Review	7
3.1	Objects of the <i>Water Efficiency Labelling and Standards Act 2005</i>	7
3.2	Scheme use	8
3.3	Scheme outcomes and benefits	11
3.4	Interactions with other schemes	14
3.5	Regulatory impacts and costs	16
3.6	Scheme costs and cost recovery arrangements	17
3.7	Appropriateness of product coverage	19
3.8	Industry engagement mechanisms	20
3.9	Future directions	21
4	Summary	22
5	References	23
	Appendix A – Review Terms of Reference	24
	Appendix B – Guidelines for submissions	26
	Appendix C – Coversheet for submissions	27

Tables

Table 1. Review timeline	3
--------------------------	---

Abbreviations

COAG	Council of Australian Governments
DotE	Department of the Environment
DSEWPaC	Department of Sustainability, Environment, Water, Population and Communities
E3	Equipment Energy Efficiency Program
GL	Gigalitre
ISF	Institute for Sustainable Futures
kL	Kilolitre
ML	Megalitre
WaterMark	WaterMark Scheme
WELSAC	Water Efficiency Labelling and Standards Advisory Committee
WELSOG	Water Efficiency Labelling and Standards Official's Group
WELSAG	Water Efficiency Labelling and Standards Advisory Group
WELS	Water Efficiency Labelling and Standards

1 Introduction

Established in 2005, the Water Efficiency Labelling and Standards (WELS) Scheme (the Scheme) aims to improve the water efficiency of certain water-using products, through a system of mandatory product registration and labelling. The Scheme is administered by the Commonwealth Department of the Environment in accordance with the *Water Efficiency Labelling and Standards Act 2005* (Cth) (WELS Act 2005) and associated instruments.

With the WELS Act 2005 requiring review every five years, it is now timely that an independent review of the Scheme be undertaken.

1.1 About the 2015 Review

Section 76 of the WELS Act 2005 requires an independent review of the Scheme to be undertaken every five years from its commencement. 2015 marks 10 years of the Scheme's operation, and therefore the second review cycle for the Scheme.

Senator the Hon. Simon Birmingham (Parliamentary Secretary to the Minister for the Environment) has engaged Tom Mollenkopf as the Independent Reviewer to undertake the second Independent Review of the Water Efficiency Labelling and Standards Scheme (the Review). In support, the Department of the Environment has engaged Aither Pty Ltd. to act as a project support team for the Review.

The purpose of the Review is to assess the appropriateness, efficiency and effectiveness of the Scheme, and the extent to which its administration has met the objects of the WELS Act 2005. The Review will also consider the regulatory impact of the Scheme on industry and identify opportunities to improve and streamline it – including reducing regulatory compliance costs for business and improving information provided to consumers. The full Terms of Reference for the Review can be found at Appendix A.

The Review will be undertaken in three phases:

- Discussion paper publication.
- Stakeholder consultation.
- Final report and recommendations.

More information about the Review can be found at the WELS website <<http://waterrating.gov.au>>.

1.2 Discussion paper

This paper has been prepared to initiate discussion and feedback among people and organisations that are affected by or involved in the Scheme's ongoing administration and future directions. It is the intention of the Independent Reviewer that the paper elicits robust discussion on all issues related to the Scheme; whether or not raised in the paper.

This discussion paper describes the operations of the Scheme and the WELS Act 2005, summarises key focus areas of the Review (highlighting issues where appropriate and known), and invites relevant comments – including thoughts on future directions for the Scheme.

Participation in the Review is encouraged from all interested parties. The Review will engage directly with the Water Efficiency Labelling and Standards Official's Group (WELSOG) and the Water Efficiency Labelling and Standards Advisory Group (WELSAG). In this context, the Independent Reviewer invites submissions that address the Terms of Reference (provided at Appendix A), individual questions posed throughout this paper, and other observations, data and any suggestions on issues related to the Scheme.

It should be noted that the content of this discussion paper is not informed by any formal consultation with stakeholders. Therefore, no judgements should be made about potential recommendations of the Review or future directions of the Scheme based on information provided in this discussion paper. The formal consultation process, which will expand on the issues and opportunities identified here, will commence soon after the publication of this paper.

1.2.1 Guidance on submissions

A number of questions have been included throughout the paper as a means of promoting consideration and assisting respondents in developing submissions. They have been intentionally made broad in order to not restrict submissions in highlighting other issues or points of view. Submissions may address any or all of these questions, or provide other appropriate material for consideration.

Where statements about fact are made in submissions, such statements should be substantiated with evidence or quantified where appropriate.

Submissions received will be used to better inform considerations made by the Independent Reviewer and the Review's findings, recommendations and general reporting.

Submissions received will be published on the WELS website <<http://waterrating.gov.au>>; unless confidentiality is clearly requested. Submissions should indicate whether, and which parts of the submission are confidential. Where individual submissions are requested to remain confidential in whole, authors should provide a redacted version also.

The closing date for receipt of submissions is **5:00 pm, Friday 6 February 2015**.

Where able, it would be preferred if submissions are lodged electronically via email to: welsreview2015@aither.com.au.

Written submissions can also be submitted via post, addressed to:

2015 WELS Scheme Review
Aither Pty Ltd.
Level 1, 2/120 Giles Street
Kingston
Canberra
ACT, 2604

Parties wishing to make a submission to the Review should refer to Appendix B and Appendix C for further detailed guidance.

1.3 Review timetable

The Review will be conducted according to the following timetable over a period of approximately six months (Table 1).

Table 1. Review timeline

Activity	Date
Review commencement	November 2014
Discussion paper published	December 2014
Consultation meetings	December 2014
Written submissions period	December – February 2014
Submission close date	Friday 6 February 2015
Draft report	March 2015
Final report	May 2015

2 The Water Efficiency Labelling and Standards Scheme

2.1 Background

The Water Efficiency Labelling and Standards Scheme covers the mandatory registration and labelling requirements for designated water-using products sold in Australia.

In 2004 the Scheme received endorsement through the National Water Initiative. The joint Council of Australian Governments (COAG) agreement committed to implement legislation for the Scheme by 2005. Established in 2005, the Scheme is administered by the Commonwealth Department of the Environment in accordance with the *Water Efficiency Labelling and Standards Act 2005* (Cth) and associated instruments.

Under the Scheme, designated water-using products are required to be registered with the WELS Regulator and to display (at point of sale and in advertising) star rating labelling, which indicates the water efficiency of the specific product. Currently, the Scheme regulates the sale of designated products across seven categories: showers; tap equipment over a basin (excluding bath and shower taps); flow controllers; toilet (lavatory) equipment; urinal equipment; clothes washing machines; and dish washing machines. The Scheme also sets minimum efficiency and performance requirements for toilets and washing machines.

2.2 Objectives

The Scheme's main objective is to reduce water consumption by providing information about the water efficiency of water-using products to purchasers to promote the adoption of more water efficient technologies.

The objectives of the Scheme are stated in the three objects of the WELS Act 2005:

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

2.3 Administration and operation

The Scheme is administered by the Commonwealth Government through an intergovernmental agreement with state and territory governments, but involves the direct involvement of industry and consumers as well.

2.3.1 Government

The *Water Efficiency Labelling and Standards Act 2005* (Cth) established the Scheme. The WELS Act 2005 is supported by corresponding state and territory legislation. The Scheme is administered by the Commonwealth on behalf of all Australian governments under an intergovernmental agreement.

The WELS Regulator (currently the First Assistant Secretary of the Environment Quality Division in the Department of the Environment) is responsible for administering the Scheme and enforcing the regulations on behalf of the Commonwealth Government.

The Regulator is able to use a range of powers to enforce the Scheme, such as: monitoring compliance breaches of the WELS Act 2005; imposing penalties; withdrawing products from market; deregistering products; and advertising convictions. However, the Regulator can also use a range of administrative actions and education avenues as alternatives to penalties and legal action.

The Standing Council on Environment and Water (established under COAG) was responsible for developing the initial strategic plan and budget for the Scheme, and was initially consulted about changes to the scheme and the fees. The Council no longer exists and thus plays no ongoing role in the Scheme's administration.

WELSOG, which includes representatives of all state and territory governments, and the Australian Government, provides advice to the Department of the Environment on policy and operational matters related to the Scheme.

2.3.2 Industry

Designated products under the Scheme must be registered by registrants (typically manufacturers, importers, wholesalers or retailers) with the WELS Regulator, and must display (at the point of sale and in advertising) a star rating of their water efficiency.

Registrants must meet a range of requirements to register products and are required to pay a annual registration fee based on the number of models registered. Prior to 2013, registrants were required to register products in a five year renewal cycle. New registration arrangements introduced in January 2013 require product registrations to be renewed on an annual cycle expiring on 22 January every year. A fee is payable upon product registration renewal.

Leading up to the 2013 changes, the Department of the Environment made a significant investment in business systems to implement the annual registration cycle and new fee structure.

It is the responsibility of the registrant to ensure that labelling meets the requirements of the WELS Standard (*Water Efficiency Labelling and Standards Determination 2013 (No. 2)* and Australian and New Zealand Standard AS/NZS6400:2005 Water-efficient products—Rating and labelling).

Industry is formally represented in the Scheme through WELSAG. WELSAG was established in November 2010 based on recommendations made by the 2010 Independent Review of the Scheme. WELSAG has a membership designed to be representative of stakeholders from across a range of affected industries – including manufacturers, importers, retailers and utilities.

2.3.3 Consumers

Mandatory water efficiency labelling enforced under the Scheme allows consumers to compare the water efficiency of different water-using products in order to make informed decisions upon product purchase.

It is important to note that rebates are not offered under the official Scheme itself. However, a range of other entities (such as local water authorities or state governments) do offer rebates on products registered under the Scheme.

2.4 2010 Independent Review

In 2010 an independent review of the Scheme was undertaken by Dr Chris Guest. The review assessed the appropriateness, effectiveness and efficiency of the Scheme over the first five years of its operation.

The 2010 review made a range of recommendations for improvements to the Scheme focused on: governance; the objects of the WELS Act 2005; WELS Standards; administration of the Scheme; registration of products under the Scheme; product labelling; compliance; communications; product coverage; cost recovery; Trans-Tasman Mutual Recognition Arrangement; and linkages to other similar Schemes.¹

A joint response from the Commonwealth, state and territory Governments was published in response to the 2010 review's recommendations. While the governments did not agree with all of the recommendations, a number of recommendations were accepted in whole or in part, leading to changes in the Scheme's administration.

2.5 Key changes to the Scheme since 2010

A number of key changes to the Scheme have occurred since the 2010 Independent Review. As part of the current Review, it will be important to consider these changes and assess the impact they have had on improving the Scheme. Key changes include:

- The establishment of WELSAG and WELSOG in November 2010.
- The introduction of minimum water efficiency standards for clothes washing machines in November 2011.
- Substantial changes introduced in 2012 (effective 22 January 2013) to WELS product registration and fee arrangements. These changes were aimed at making the application of fees more equal across small and large businesses, and improving the ability to recover costs under the Scheme. Significant investment has been made in scheme operating systems to make registration processes more efficient and decrease industry costs.
- Introduction of civil penalties for non-compliance in 2012 – removing the need for criminal convictions in all cases. New compliance tools and stakeholder engagement approaches were introduced with the aim of lessening compliance burden on industry.
- Introduction of Amendment 6 to the WELS Standard in 2013 – enforced through the *Water Efficiency Labelling and Standards Determination 2013 (No. 2)*, the intention of which was to create a fair and equal playing field for all of industry.
- A revision of the WELS Standard and new WELS Determinations which are anticipated to come into effect in January 2015.

¹ A copy of the 2010 review Final Report can be accessed here <<http://www.environment.gov.au/water/publications/independent-review-water-efficiency-labelling-and-standards-scheme>>.

3 Focus areas of the 2015 Review

3.1 Objects of the *Water Efficiency Labelling and Standards Act 2005*

Scheme performance can be measured a number of ways. One way is to assess whether or not the Scheme is meeting the original objects of the legislative instrument (the WELS Act 2005) through which it was established and is currently administered.

There are three objects outlined in the WELS Act 2005 which guide the objectives of the Scheme. These are:

- To conserve water supplies by reducing water consumption.
- To provide information for purchasers of water-use and water-saving products.
- To promote the adoption of efficient and effective water-use and water-saving technologies.

The 2010 review of the Scheme assessed the appropriateness of the WELS Act 2005's objects. A recommendation was made that no changes be made because the objects appropriately underpinned and guided the Scheme. The joint government response to the 2010 review agreed with this recommendation.

The current Review will assess the appropriateness of the objects and make an assessment about the Scheme's performance to date against the objects. This will be informed by information gathered through consultation and analysis undertaken as part of the Review.

Comments are sought on the appropriateness and performance of the Scheme against the three objects of the *Water Efficiency Labelling and Standards Act 2005*. For example:

1. Do the objects of the WELS Act 2005 remain appropriate?
2. What evidence exists that the Scheme directly or indirectly conserves water resources?
3. Does the Scheme provide effective information about the water efficiency of water-using products?
4. What evidence exists that the Scheme promotes use of water efficient technologies?

3.2 Scheme use

Industry, consumers, governments and regulators use the Scheme in different ways. Use has changed overtime in response to changes in water management, Scheme administration and stakeholder preferences. Use of the Scheme now is likely to differ to use of the pre-1999 voluntary AAA water efficiency program, the post-1999 Water Services Association of Australia 5A program (the genesis of today's Scheme), and may also differ to use at the time of the first independent review of the current WELS Scheme in 2010.

Under current arrangements, some Scheme participants are required by law to use the Scheme (industry and government), while others use the Scheme voluntarily to pursue individual aims (consumers), commercial gains (industry), or public policy outcomes and regulatory efficiencies (other governments and regulators).

Industry

Industry's main interaction and use of the Scheme is through registration and labelling of designated products covered by the Scheme. Based on data collected by the Institute for Sustainable Futures (ISF) in 2014, the number of water-using products registered has increased year on year from 2006 to 2013 (ISF 2014). Based on data collected to date, it is estimated that product registration renewals in 2014 have fallen compared to 2013, while new product registrations have increased.

Changes to registration arrangements (effective 22 January 2013) increased industry's share of compliance costs. The number of clothes washing machines, dish washing machines and flow controller products registered under the Scheme fell following the introduction of the new fees. This was expected, however, it is unclear whether this drop can be wholly attributed to Scheme changes or to other factors; such as the maturity of the market leading to less competition, or normal competitive forces and product rationalisation.

In comparison, the number of tap, shower, toilet and urinal related products registered have increased over the same period. It is currently unclear as to whether these products are better able to absorb compliance costs under the Scheme, or if this is the result of other market forces.

Competition in markets across most of the seven product categories has generally increased year on year since 2006. The number of registered brands under the Scheme grew annually until 2012 with a minor drop in 2013 – potentially due again to product registration changes that were introduced in January 2013.

It is possible that industry uses the Scheme for market research purposes. Information available about competitors' products on the register and product database allows participants to benchmark product performance. The Scheme also allows registrants to promote the performance benefits of their products, highlighting key differentiators at the point of sale in a potentially more credible way than traditional advertising.

In terms of numbers of users, retailers who use the Scheme likely outnumber Scheme registrants. Retailers mainly use the Scheme's product registration database to ensure that the products that they are selling to consumers are registered and legally allowed to be sold.

It is important to note that while foreign industry and entities use the Scheme (for example, the New Zealand scheme accepts WELS product registration in Australia for the purposes of New Zealand Scheme compliance), currently, the WELS Regulator's compliance actions are limited to entities that are engaged in transactions across Australian state or territory boundaries, or are involved in the import or export of designated WELS products in Australia. The WELS

Regulator does not have the ability to undertake compliance actions outside of these jurisdictions.

Consumers

Consumers' main interaction with the Scheme is at product point of sale, when they are exposed to advertising material or in instances where water efficiency labels may remain on products after sale.

Building on market research undertaken in 2008, 2009, and 2011, the Department of the Environment commissioned further work in 2014 to assess consumer use of the Scheme. The latest research found that 87 per cent of consumers recognised the water efficiency label – up from 53 per cent in 2008. Despite finding a decline in consumers' overall concern for water saving activities, the majority of consumers use the water efficiency labels and found them influential in purchase decisions.² These findings suggest consumers are actively using the Scheme in their decision making.

Of consumers surveyed in 2014, 83 percent indicated that they viewed the Scheme as 'very' or 'quite' credible, and that because it is a government regulated initiative consumers have confidence in the information provided.

Government

It is currently understood that governments and regulators have used and continue to use the Scheme for two main purposes: (1) as a trusted foundation for other schemes; and (2) to pursue parallel jurisdictional water-efficiency policy initiatives.

Many state and territory governments, and some government owned water utilities, have used the WELS Scheme to facilitate a range of rebate and subsidy schemes. Several of these schemes have concluded, but some are ongoing, for example:

- Living Victoria Water Rebate Program (Victorian Government) – a rebate program covering WELS rated showerheads, dual flush toilets and washing machines. The program is due to close in June 2015.
- Showerhead Exchange (Victorian water retailers) – a number of Victorian water retailers offer a showerhead exchange program which allows participants to exchange existing showerheads for 3-star or above WELS rated showerheads free of charge.
- Showerhead Exchange Program (Hunter Water) – participants are able to exchange existing showerheads for 3-star or above WELS rated showerheads free of charge.

The ability to use the WELS rating as a basis for other schemes and policies may provide benefits for governments and regulators through reduction of regulatory duplication and minimisation of costs across different levels of government.

In addition, ISF's 2014 research found that the Scheme and WELS rating framework had become a point of reference for urban water policy development across Australia. ISF identified 32 individual policies that made reference to the Scheme – including 19 water efficiency programs; four energy efficiency programs; six building codes, regulations and rating schemes; and 3 tenancy laws.

² Quantum Market Research's 2014 research only focused on a specific subset of WELS rated products – specifically toilet, shower, flow controller and tap products.

Comments are sought on the Scheme's use by industry, consumer, government or other stakeholder groups. For example:

1. Does the discussion above accurately reflect stakeholder use of the Scheme? Are there other major users or other types of use?
2. Has use of the Scheme changed since the Scheme's inception? If so, how and for what reasons?
3. To what extent does the Scheme continue to be used as an eligibility requirement for other rebate or subsidy programs? If so, for what purpose? Does this use contribute to meeting the objectives of the Scheme?

3.3 Scheme outcomes and benefits

Since its establishment close to 10 years ago, the Scheme now appears to be well recognised across industry, consumers and government. It has also existed for a sufficient period of time that demonstrable outcomes should have been realised.

Given the Scheme's multi-faceted nature that covers interactions between industry, consumers and governments, outcomes and benefits may have been both in specific localised sectors, or across the wider community.

Potential outcomes and benefits

Based on the goal of conserving water supply, a key objective of the Scheme is to reduce society's water consumption through the adoption of more water efficient technologies. However, there are a range of other direct or indirect benefits or outcomes that could be driven by the Scheme, these might include:

- Water supply savings – which may defer the need for major infrastructure investments and cost to society associated with this, and provide opportunities for existing water supplies to be put to alternative uses.
- Environmental benefits – including those associated with saving water, but also complementary reductions in energy consumption and CO₂ (as some products become more water efficient they can also become more energy efficient).
- Consumer financial benefits – including from lower water and energy consumption from using more efficient products.
- Product efficiency and wider innovation benefits – from directly incentivising product performance improvements and wider innovation in product development.
- Marketing and competition benefits – including assisting industry in differentiating products and independently validating and demonstrating product performance.

Benefits achieved across the whole of society may be difficult to attribute directly to the Scheme. In this context, it is important that both wider benefits to society as well as specific benefits to industry, consumer and government sectors are illustrated. This will help to ensure a comprehensive assessment of the Scheme's performance and outcomes.

Evidence to date

Since the Scheme's establishment a number of studies have been commissioned to determine Scheme outcomes and benefits.

In 2008, an ISF study highlighted the potential for Australian society to have saved approximately \$1 billion on water and energy bill costs through the adoption of more efficient products under the Scheme (ISF 2008). The study estimated that by 2021 adoption of water efficient products could potentially reduce annual domestic water consumption by greater than 100,000 megalitres (ML); conserve more than 800,000 ML by 2021; and decrease total annual greenhouse gas output by 400,000 tonnes.

In the same study it was estimated that the scheme was generating water savings at a long-run marginal cost of \$0.08 per kilolitre (kL) to \$0.21 per kL (ISF 2008). When compared to the long-

run marginal cost of different water supply options at the time (which ranged from \$1 to \$3 per kL), water savings achieved by the Scheme were highly competitive from a cost perspective.³

In 2014, further work was commissioned that found total water savings attributable to the Scheme totalled 70 gigalitres (GL) per annum in 2013 (ISF 2014). While this water saving figure is less than estimates made in 2008, the most recent study suggested annual water savings will increase to 147 GL by 2021 and to 204 GL per annum by 2030 – as a function of remnant appliances being replaced with more efficient products over time.

The 2014 ISF study estimated that by 2030 the Scheme would contribute to a cumulative reduction of 46 million tonnes of CO₂ equivalent. Analysis found the financial benefit to Australian households of this reduction was \$520 million in reduced utility bills in 2013, and by 2030 would rise considerably to over \$2 billion per annum.

The 2014 ISF study also examined sales of water-using products covered under the Scheme, finding a general increase in sales of more efficient products increasing since the establishment of the Scheme. For example consumers are now purchasing more efficient washing machine products, clothes washing machines, showers, toilets and tap equipment than was the case in 2007.

The efficiency of products registered has also improved over time, for example:

- Clothes washers now achieve a 4.5-star rating or above, on average.
- Dish washers with a 4-star or greater rating now dominate the market – accounting for more than 70 per cent of available products.
- Tap equipment and flow controllers product efficiency has increased – six-star efficient taps, and four and five-star efficient flow controllers now dominate the market.
- Toilet products now achieve 4-star ratings on average, and the urinal equipment market is now dominated by 3-star and above products
- However, the efficiency of registered shower products in the market remains mostly unchanged in comparison (ISF 2014).

While it is clear that registrants are registering more efficient products and consumers are purchasing more efficient products, further information may be required to substantiate the extent to which the Scheme has directly resulted in these outcomes.

Anecdotal evidence suggests the Scheme has played a role in controlling water demand and contributed to the deferral of water supply augmentations. However, further information will be needed to substantiate this – including specific examples or demonstration of causality.

In addition, there currently appears to be limited documentation of other potential benefits – including those associated with marketing and competitive differentiation, and wider innovation benefits to Australia's economy and society.

Comments are sought on the outcomes and benefits of the Scheme to date, and potential benefits in the future. For example:

- 1. Are the potential benefits and outcomes of the Scheme highlighted above accurate?**

³ In general the long-run marginal cost of surface water supply options from traditional water storages is over \$1 per kL (depending on type and location). The 2008 ISF study estimated that the cost of desalination ranged from \$1.19 to \$2.55 per kL, with other source substitution options such as water recycling generally being more expensive.

What other potential benefits exist?

- 2. What have been the whole of society outcomes and benefits, as distinct from those accruing directly to industry, consumers and government individually?**
- 3. What impact has the Scheme had for water availability for agriculture, the environment or other non-urban uses?**
- 4. What impact has the Scheme had on decisions to invest in water supply infrastructure?**

3.4 Interactions with other schemes

The Scheme interacts with other national and state schemes. Some of these interactions and overlaps are intentional, such as linkages between the Scheme and state and territory grants or rebates programs, and the WaterMark Scheme. In some circumstances interactions create beneficial synergies and efficiency gains for stakeholders, such as avoiding all states needing to create independent product efficiency programs.

However, this may not be the case for other interactions, which may create additional costs in the form of redundancies and duplication across industry or government. Even intentional linkages have the potential to create unnecessary regulatory burden, increase compliance costs, or create confusion if not implemented effectively.

In consideration of the potential to deliver improved efficiency, and in particular reduce compliance or administration burden and cost, calls have been made by some stakeholders regarding the potential to more directly link or combine the Scheme with WaterMark, or potentially merge it with the Equipment Energy Efficiency (E3) Program.

Box 1: About the WaterMark Scheme and Equipment Energy Efficiency (E3) Program:

The WaterMark Scheme is a mandatory product certification scheme that ensures plumbing and drainage materials and products are fit for purpose and are compliant with the Plumbing Code of Australia. The WaterMark Scheme covers a large range of plumbing and drainage equipment (such as pipe material and a range of non-consumer related equipment), only some of which are also covered under WELS.

Established in 1992, the Equipment Energy Efficiency (E3) Program sets minimum energy performance standards and mandatory energy efficiency labelling guidance for energy-using products used in households, and commercial and industrial settings. Currently, the E3 Program and WELS Scheme only share two common products: dishwashers and washing machines.

The 2010 review of the Scheme recommended that administration of the Scheme should be merged with the E3 program to increase efficiencies, and that the registration, compliance and communications functions for plumbing products covered under the Scheme could be reassigned to the entity(s) administering the WaterMark certification process.

Neither recommendation was accepted by the joint government response and no formal linkage between the Scheme and WaterMark or E3 program has occurred in the subsequent years (beyond the introduction of mandatory WaterMark certification for registration under the Scheme). This may have been due to perceptions of small long-term efficiency gains, the transaction costs, the short operating life of the Scheme at that time or other reasons.

However, on 1 November 2011, WaterMark certification became a compulsory prerequisite for registering certain products under the Scheme – including showers, toilet and urinal equipment, tap equipment and flow controller products. Because it is not illegal to sell non-certified WaterMark plumbing products (but it is illegal to install them) the WELS Scheme has effectively become the point of sales control for the WaterMark Scheme in relation to common products.

A review of the WaterMark Scheme by the Australian Building Codes Board in 2013-14 addressed linkages between the Scheme and WaterMark (ABCD 2014). The Draft Consultation Report published in January 2014 notes that while the objectives of the WaterMark Scheme and the WELS Scheme are aligned, they are not interchangeable. The assessment found that given the unclear regulatory structure of WaterMark, at best the two schemes could provide

administrative support to each other in the form of joint registration or database portals, and cooperation in relation to testing standards and compliance enforcement. Beyond this, opportunities to realise greater efficiencies and lower costs would require more fundamental changes to both schemes regarding revenue generation arrangements and regulatory responsibilities.

As a matter of principle, duplications and redundancies that exist across similar non-competing schemes should be addressed based on the fundamentals of good public policy. Fundamentals which include maximising public benefits while minimising costs or other burdens to government, industry or other stakeholders, and the efficient and effective spending of public money.

There is the potential that some inefficiency across the WELS Scheme and related schemes could be addressed relatively easily with minor cost. Others may be more complex and come at a higher cost to stakeholders. In the absence of some other rationale, improving interactions between the Scheme and other schemes, should not come at the cost of removing or reducing benefits currently achieved by the Scheme; increase confusion to market or Scheme participants (including consumers); or increase barriers to industry.

Comments are sought on the potential to achieve efficiency gains through improved linkages or interactions between schemes, or how overlaps could be managed to reduce duplication or burdens on industry or government. For example:

1. In what further ways does the Scheme interact with other schemes, programs or regulations (nationally or at the state level) not mentioned here?
2. Do interactions, crossovers, or overlaps between schemes create confusion or unnecessary burden for industry or consumers? Is the WELS Scheme clearly defined?
3. How could interactions between the Scheme and other similar national schemes (such as WaterMark and E3) be improved? What benefits would this provide, and to whom?
4. Would it be appropriate for the Scheme to merge with or take over the WaterMark certification process? What benefits or costs would this create, and for whom?
5. Would it be appropriate for the Scheme to remove WaterMark requirements from registration arrangements? What impact would this have on industry and the ability for the Scheme to meet its objectives?
6. Do other schemes and programs offer opportunities or lessons that could be reflected in administration of the Scheme?

3.5 Regulatory impacts and costs

The imposition of regulation and mandatory compliance requirements for industry imposes costs. The Scheme, like other regulatory schemes, imposes direct costs on both industry and governments, which are indirectly borne by consumers and society.

To be appropriate and efficient, regulation should be cost-effective and should benefit society more than it burdens. Current Australian Government policy is focused on reducing regulatory burdens placed on industry and individuals across the economy by removing or reducing unnecessary or inappropriate regulation, compliance requirements, and red tape. In this context, this Review will be considering the direct and indirect regulatory impact and cost of the current Scheme.

Under the Scheme, industry must undertake annual registration of products with the WELS Regulator. Product registrants pay a fee determined by the number of models being registered throughout the year – fees range from \$600 per annum for 1 to 5 product models, to \$121,000 per annum for 2,001 to 4,000 product models. Average fees imposed by the Scheme are approximately \$3,000 per registrant.

Other costs to industry include mandatory certification under the WaterMark Scheme before registration with the Scheme for some products. However, WaterMark certification for these products would be required regardless of whether the Scheme existed; and internal costs associated with product compliance (such as product testing) through the registration process and ongoing administration requirements would unlikely be drastically different.

Despite regulatory burdens and costs imposed on stakeholders by the Scheme, in order to generate a comprehensive picture of the Scheme's merit, these costs must be weighed against both the private and public benefits that the Scheme provides.

In this context, the Review will consider whether the costs imposed by the Scheme are appropriate given the benefits generated. It will also consider whether costs are distributed appropriately based on the nature and distribution of public and private benefits, as well as whether regulatory burdens can be reduced without compromising overall benefits.

Comments are sought on the nature and extent of regulatory impact of the Scheme, and the appropriateness and distribution of regulatory costs. For example:

- 1. What direct or indirect impacts or costs are borne by industry as a result of the Scheme? What information is available to quantify these?**
- 2. Are these costs appropriate, given the public or private benefits provided by the Scheme?**
- 3. What opportunities exist to reduce regulatory burden and costs without compromising the outcomes and benefits of the Scheme?**
- 4. Does the Scheme provide incentives or impediments to competition or innovation in the markets for relevant water-using products?**
- 5. Can you comment on the degree to which industry supports the current Scheme?**

3.6 Scheme costs and cost recovery arrangements

The Scheme operates under a partial cost recovery arrangement – a majority proportion of the Scheme’s operational expenses are borne by industry and the remainder covered by governments. The Scheme was established on the basis that 80 per cent of its operating costs would be borne by industry (recovered through registration fees) and 20 per cent would be covered by governments.

This position was informed in part by the Australian Government Cost Recovery Guidelines (agreed in December 2002) which outline the Commonwealth’s approach to cost recovery. The underlying principle of the guidelines is that the costs of a product or service provided by the Commonwealth Government should be recovered wherever it is efficient and effective to do so, and where the beneficiaries are narrow and identifiable.

In the early years of the Scheme’s operation it only achieved 20 to 30 per cent cost recovery – this was considered unsatisfactory, and unsustainable from a government budget perspective. This contributed to significant changes in the Scheme fee structure in 2013 (as outlined further below).

A number of submissions to the 2010 review called for the Scheme to be exempt from cost-recovery on the basis that it was providing a ‘public good’. The 2010 review recommended that:

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

The joint government response did not agree with these recommendations, and in response proposed new funding arrangements – including improved cost recovery arrangements to ensure the ongoing financial sustainability of the scheme. In order to ensure that the Scheme would meet the original 80 per cent cost recovery target, the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013* (WELS Act 2013) was passed through federal parliament with bipartisan support in June 2013.

The WELS Act 2013 made a number of changes to prior arrangements – whereby higher fees are now charged to registrants for the annual registration of products. These are intended to recover expenses for both registration and non-registration activities (such as compliance and enforcement).

Based on the most recent Cost Recovery Impact Statement for the Scheme, the total operational budget in 2013-14 was \$1.91 million. At the time of publication it was estimated that costs recovered through product registrations would total \$1.5 million for the 2013-14 financial year. This is expected to fund approximately 80 per cent of the costs of the Scheme. Combined, governments were expected to contribute the remaining 20 per cent (or approximately \$380,000).

Comments are sought on the appropriateness and efficiency of current cost recovery arrangements. For example:

1. **Is the 80 per cent cost recovery target appropriate? Is there a more appropriate and**

equitable approach to ensure successful ongoing operation of the Scheme?

- 2. What impacts (positive or negative) have occurred as a result of changes introduced by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*? Are the current fee structures for different entities or products equitable?**
- 3. Do current cost recovery arrangements impact on industry competitiveness or innovation? What information is available to substantiate this?**
- 4. How do Scheme costs impact consumers? Are they passed through in the form of increased prices?**

3.7 Appropriateness of product coverage

The Scheme currently regulates the sale of products across seven categories: showers; tap equipment over a basin (excluding bath and shower taps); flow controllers; toilet (lavatory) equipment; urinal equipment; clothes washing machines; and dish washing machines. Waterless urinals are not currently a designated product under the Scheme. The Scheme also excludes second-hand water-using products and various other products imported for personal use only.

Based on independent analysis conducted in 2005, a product shortlist for potential inclusion in an expanded Scheme was agreed by Australian governments and the National Water Commission in 2006/07. Shortlisted products included: hot water circulators; domestic irrigation controllers; evaporative air conditioners; and instantaneous gas hot water heaters.

Analysis and modelling was undertaken between 2008 and 2010 on the shortlisted products and it was concluded that, despite all the listed products having the ability to save water, in the case of hot water circulators and domestic irrigation controllers, difficulties existed in estimating the water actually saved. Research highlighted that evaporative air conditioners and instantaneous gas hot water heater products were suitable for inclusion in the Scheme and regulatory impact statements were expected to be undertaken under the 2012-15 WELS Strategic Plan.

The 2010 review into the Scheme made a recommendation that a regulatory impact statement be undertaken to assess the costs and benefits of removing the requirement that plumbing products (e.g. tap equipment) have water efficiency ratings, and instead prescribe a minimum water efficiency standard. This recommendation was based on the fact that plumbing products constitute a disproportionate administrative load on the Scheme relative to the water they potentially save through improved efficiency. The joint government response agreed with this recommendation, and planned to consider it under the 2012-15 WELS Strategic Plan.

Comments are sought on the appropriateness of current product coverage. For example

- 1. Is the current suite of products covered under the Scheme appropriate? Are there products not covered under the Scheme that should be, or products that should be removed?**
- 2. What impacts would likely result from water efficiency ratings being replaced by minimum water efficiency standards for different products? Would this compromise the Scheme's outcomes?**
- 3. Is it appropriate that second-hand water-using products and various other products imported for personal use only not be covered under the Scheme?**

3.8 Industry engagement mechanisms

Prior to 2010, officials from all state and territory governments met and provided advice on the Scheme's administration through the inter-governmental Water Efficiency Labelling and Standards Advisory Committee (WELSAC). This group was criticised for having a limited role in shaping the Scheme and not enabling stakeholders (especially industry) to have a fair say in the Scheme's administration and future direction.

The 2010 review recommended that WELSAC be renamed the Water Efficiency Labelling and Standards Official's Group (WELSOG) and the Scheme establish a new group to better engage with industry; namely the Water Efficiency Labelling and Standards Advisory Group (WELSAG).

The joint government response agreed with this recommendation, and WELSAG was established in November 2010. The group's purpose is to communicate industry and stakeholder sentiment on the management of the Scheme and to advise Commonwealth, state and territory Governments on a range of matters related to industry involvement and strategic direction. Appointment of members to WELSAG is designed to ensure that a diverse and representative group of stakeholders are involved.

In addition to the establishment of WELSAG, the then Department of Sustainability, Environment, Water, Population and Communities (DSEWPac) held three stakeholder forums in 2012 to provide information to industry stakeholders and obtain feedback on proposed Scheme changes.

It is also understood that industry is also involved in Scheme design and administration through the development of the technical details of the WELS Standard. This occurs through the Standards Australia 'WS32' committee.

Comments are sought on the effectiveness of industry engagement in the Scheme to date. For example:

- 1. Has industry engagement in the Scheme in the design and administration of the Scheme been adequate?**
- 2. Has the establishment of WELSAG improved industry engagement and involvement in Scheme design and administration? Does WELSAG provide an effective means of representing industry views to the Scheme's Regulator?**
- 3. Are there any other improvements that could be made regarding industry engagement with the Scheme? For example, would further stakeholder forums such as those held in 2012 be beneficial?**

3.9 Future directions

As noted in Section 1, this discussion paper has been prepared to promote discussion among Scheme stakeholders. The paper has not yet been informed by stakeholder consultation or detailed analysis of the range of potential issues. As a result, the Reviewer has not formed, and the paper does not seek to present particular views about future directions or specific changes.

In general terms, however, the Review will consider what, if any changes to the Scheme are necessary or warranted. The future directions for the Scheme could involve little or no change, or they may include (but are not limited to):

- Modification of Scheme objectives.
- Cessation of the Scheme.
- Expansion or contraction of Scheme's product coverage.
- Changes to reduce the regulatory burden of the Scheme.
- Merging or changing interactions with other schemes.
- Changes to cost recovery arrangements.
- Improvements to industry engagement arrangements.

The formal consultation process and information received via submissions will assist the Reviewer in developing future options and potential changes for the Scheme. In this context, the Review would appreciate commentary from parties regarding the potential future directions of the Scheme in the aforementioned or other areas.

Comments are sought on possible future directions for or changes to the Scheme. For example:

1. **Is the Scheme still necessary, and what would be the consequences if the Scheme ceased to exist?**
2. **Would other government or industry led Schemes develop in its place? Would these be more or less efficient or effective?**
3. **Are there other schemes in Australia or internationally that offer lessons or guidance for the future of the Scheme?**
4. **What could an alternative Scheme model look like, and how would its costs or benefits compare to the current model?**

4 Summary

This discussion paper has provided background to the Scheme, its administration, relevant legislation and regulation, in addition to presenting the nine areas that the 2015 Review will focus on.

From the information reviewed to date, it appears evident that the Scheme has delivered positive outcomes and benefits to various stakeholders. However, it also appears that the Scheme imposes various costs and burdens on industry and other stakeholder groups.

The Review will examine a range of evidence from various sources to make an assessment of the appropriateness, efficiency and effectiveness of the Scheme, and the extent to which its administration has met the objects of the WELS Act 2005. In addition, the Review will identify opportunities to reduce regulatory burden and costs imposed by the Scheme on industry and business, and examine ways to improve consumers' ability to make informed decisions.

A number of questions have been included throughout this paper as a means of assisting respondents in developing their submissions. However, the Review invites commentary on any aspect of the focus areas for the Review, so as not to unnecessarily restrict submissions. Submissions to the Review may address any or all questions, or provide other appropriate commentary or information for consideration. Wherever possible, views or opinions expressed in submissions should be substantiated – including by providing supporting evidence.

Respondents are reminded that the closing date for receipt of submissions is **5:00 pm, Friday 6 February 2015**. Where able, it would be preferred if submissions are lodged electronically via email to: welsreview2015@aither.com.au. Parties wishing to make a submission to the Review should refer to Appendix B and Appendix C for further detailed guidance.

5 References

Australian Building Codes Board (ABCB) 2014, *Review of the Watermark Certification Scheme Consultation Draft*, accessed November 2014, <<http://www.abcb.gov.au/en/product-certification/watermark/WaterMark-scheme-review.aspx>>.

Chris Guest 2010, *Independent Review of the Water Efficiency Labelling and Standards Scheme*, accessed November 2014, <<http://www.environment.gov.au/water/publications/independent-review-water-efficiency-labelling-and-standards-scheme>>.

Chris Guest 2010, *Water Efficiency Labelling and Standards Scheme Independent Review Discussion Paper*, accessed November 2014, <<http://www.environment.gov.au/water/publications/independent-review-water-efficiency-labelling-and-standards-scheme>>.

Commonwealth Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) 2011, *Water Efficiency Labelling and Standards (WELS) Scheme Strategic Plan 2012 to 2015*, accessed November 2014, <<http://www.waterrating.gov.au/resource/water-efficiency-labelling-and-standards-wels-scheme-strategic-plan-2012-2015>>.

Commonwealth Department of the Environment (DotE) 2014, *Water Efficiency Labelling and Standards Scheme Cost Recovery Impact Statement 15 September 2013 to 30 June 2014*, <<http://www.waterrating.gov.au/resource/cost-recovery-impact-statement>>.

Institute for Sustainable Futures (ISF) 2014, *Evaluation of the Water Efficiency Labelling and Standards Scheme* – in confidence.

Institute for Sustainable Futures (ISF) 2008, *Cost Effectiveness Analysis of WELS: The Water Efficiency Labelling and Standards Scheme Final Report*, accessed November 2014, <<http://www.waterrating.gov.au/system/files/publications/2012/10/110/cost-effectiveness-wels.pdf>>.

Quantum Market Research 2014, *WELS Scheme Effectiveness Report of Survey Findings* – in confidence.

Standing Council on Environment and Water 2011, *Joint Final Response of the Australian Government, States and Territories to the 2010 Independent Review of the Water Efficiency Labelling and Standards (WELS) Scheme*, accessed November 2014, <<http://www.environment.gov.au/water/publications/independent-review-water-efficiency-labelling-and-standards-scheme>>.

Water Efficiency Labelling and Standards Determination 2013 (No. 2).

Water Efficiency Labelling and Standards (Registration Fees) Act 2013.

Water Efficiency Labelling and Standards (Registration Fees) Bill 2013.

Water Efficiency Labelling and Standards (Registration Fees) Determination 2013.

Water Efficiency Labelling and Standards Act 2005.

Water Efficiency Labelling and Standards Regulations 2005.

Appendix A – Review Terms of Reference

Introduction

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

WELS is Australia's water efficiency labelling scheme that requires certain products to be registered and labelled with their water efficiency in accordance with the standard set under the WELS Act. The WELS Act is supported by complementary legislation in all States and Territories and is administered by the Commonwealth on behalf of all Australian Governments.

The WELS Regulator is established by the WELS Act and is responsible for the administration of the WELS Scheme.

Products currently requiring registration are:

- showers
- tap equipment over a basin (excluding bath and shower taps)
- flow controllers
- toilet (lavatory) equipment
- urinal equipment
- clothes washing machines
- dishwashers

The objectives of the review are to:

Review the appropriateness, efficiency and effectiveness of the scheme and the extent to which its administration has met the objects of the WELS Act.

Identify opportunities to improve and streamline consumer water efficiency information, including reducing regulatory compliance costs for business and the community.

To achieve its objectives, the review will include examination of:

- The performance of the current scheme in meeting the objects of the WELS Act.
- The water and energy savings and other environmental benefits attributable to the scheme, including the impacts on water availability for agriculture, the environment and other non-urban uses.
- How the scheme is used by consumers, industry and regulators and the interactions with other regulatory arrangements including WaterMark and the Equipment Energy Efficiency (E3) scheme.
- The cumulative regulatory impacts and costs of the current scheme and other regulatory arrangements on industry and consumers.
- The appropriateness of the current cost recovery arrangements and their impact on business and the community.

- The appropriateness of the range of products currently covered by the scheme.
- The appropriateness of current mechanisms for industry engagement on the administration of the scheme.
- Alternative models for the provision of consumer water efficiency information and administration of the scheme, including international examples and the risks and benefits of alternative models.

Appendix B – Guidelines for submissions

Closing date

The closing date for receipt of submissions is **5:00 pm, Friday 6 February 2015**. Submissions received after this date may not be considered as part of the Review.

Cover Sheet

All submissions lodged must be accompanied by a fully completed cover sheet provided at Appendix C.

Submission lodgement

Submissions to the Review can be made either electronically via email or alternatively in written form via post.

Where possible, it would be preferred if submissions are lodged electronically via email to: welsreview2015@aither.com.au. Submissions via email should clearly mark the name of the individual or organisation that is the author of the submission in the subject line.

If submissions are made via post, submitters should advise the Review Team at time of posting to ensure that all submissions can be accounted for. Contact can be made either at welsreview2015@aither.com.au or by calling Daniel Baker (Consultant, Aither) on 0430 102 611.

Postal submissions can be addressed to:

2015 WELS Review
Aither Pty Ltd.
Level 1, 2/120 Giles Street
Kingston, Canberra
ACT, 2604

Acceptable submission format

It is preferred that electronic submissions are received in PDF format. However, submissions will be accepted in the following other formats:

- Microsoft Word
- Microsoft PowerPoint
- Microsoft Excel
- Rich Text Format (.rft).

Written submissions sent via post must either be typed or clearly written. If electronic material is provided accompanying a written submission (e.g. files on a USB drive or CD), files should comply with the above listed acceptable electronic formats.

Publication of submissions

Submissions received will be published on the WELS website <<http://waterrating.gov.au>>, unless confidentiality is clearly requested. Submissions should indicate whether, and which parts of the submission are confidential. Where individual submissions are requested to remain confidential in whole, authors should provide a redacted version.

Appendix C – Coversheet for submissions

2015 WELS Independent Review – submission coversheet

Organisation details	
Name of organisation (if applicable)	
Contact details	
Name of author	
Position or title	
Postal address	
Email	
Telephone number	
Publication and confidentiality	
<p>All submissions will be treated as public documents, unless the author of the submission clearly indicates the contrary by marking all or part of the submission as 'confidential'. Do not include any personal information such as your email, address or phone number within your submission. Submissions may be published on the website in full, and extracts may also be reproduced in public documents.</p> <p>If your submission contains personal information of any third party individuals, please indicate below if they have not consented to the publication of their information. A request made under the <i>Freedom of Information Act 1982</i> for access to submissions marked 'confidential' will be determined in accordance with that Act.</p> <p>Please answer the following questions yes, no or not applicable.</p>	
Would you like any part of your submission to be treated as confidential?	
Do you acknowledge that your submission may be published online in its current format, unless specifically marked confidential?	
Do you acknowledge that any personal information included within your submission may be posted online and made publically available?	
Do you acknowledge that the responsibility rests with you to ensure that you have permission from the intellectual property owner to use materials included as part of this submission?	
Do third party individuals referenced in your submission consent to the publication of their information?	
Do you acknowledge that the views presented in your submission are your own or belong to the organisation you represent, and the Commonwealth is not responsible for any views expressed?	

A I T H E R