

FREQUENTLY ASKED QUESTIONS - PROPOSED NEW WELS ARRANGEMENTS

Background to the changes

- In 2010, the WELS scheme was independently reviewed after its first five years of operation and 41 recommendations were made to improve and simplify the scheme.
- Following consultations with industry and government stakeholders, environment and water ministers considered the relevant issues at a meeting on 30 November 2011. Ministers from all states, territories and the Commonwealth agreed to the joint governments' response to the independent review recommendations, the WELS Strategic Plan for 2012-15 and a recommendation that the scheme recover 80 per cent of its costs from industry.
- Whilst the scheme was originally intended, back in 2005, to recover 80% of its costs, this has not occurred. Instead, cost recovery has been around 20-30% of the scheme's costs. This lower level of cost recovery is due to the scheme's size (around 14,000 models in the first 5 years, rather than 2,000 forecast, meaning that there has been more registration and compliance work to do) and secondly, the application of the 'family of models' provision has meant that the majority of registrations have not incurred a fee. In addition, inflation has reduced the value of the original \$1500 fee to around \$1200 today.
- The joint governments' decision covers a range of other changes, including improvements to the registration process and more compliance and enforcement options, including the introduction of civil penalties.
- Many of the proposed changes to the scheme will require legislative change. We are planning to have the necessary legislative amendments in place by 1 July 2012.
- You are also encouraged to read the Consultation Paper (<http://www.waterrating.gov.au/publications/consultation-paper.html>) for a more complete explanation of the background to the changes to the WELS scheme, and to make your comments on the options presented in that paper.

Consultation

- We have already met individually with many registrants who have a significant presence in the database.
- We are now seeking feedback from all stakeholders, through release of the Consultation Paper in January 2012 and through holding forums in Brisbane, Sydney and Melbourne in February 2012.
- Your feedback will assist in the fine-tuning of the new arrangements.

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- The formal consultation period ends on **29 February 2012**.

Proposed changes to the fees

a) There will be changes to the registration fee to allow the scheme to recover 80% of its costs, as originally intended when the scheme was set up.

- All fees are annual, with possible options of paying for up to three years.
- Existing fees will be cancelled on commencement of the new scheme and all products required to remain in the WELS scheme must re-register.
- Rebranded products are subject to a separate registration.

Fee Option 1 is essentially the status quo with no limit on the number of items that can go in a family, it continues to allow rebranding and free additions to a family. **The likely fee is \$3400 per application.**

Fee Option 4 is, in effect, the other extreme, in that it would require every model and variant to be separately registered for a fee per model. However, these separate registrations could be grouped in lots of 15 provided they shared common characteristics. **The likely fee is \$80 per item registered.**

Fee Options 2 and 3 represent the 'middle-ground' between options 1 and 4, in that they put a cap of 15 on how many models can be registered in the same registration for a single fee.

Fee Option 2 allows that group of 15 products to be within a product category, provided they all share the other necessary criteria in common – brand, star rating etc. Currently, product types are clothes washing machines, dishwashers, flow controllers, lavatory equipment, showers, urinal and tap equipment - see the table below. **The likely fee/application is \$700.**

Fee Option 3 is as Option 2, but the grouping of products in the one fee-paying group of 15 must be into a product sub-category, with **the likely fee/application being \$630**. The suggested sub-categories are presented below.

Current and proposed product sub-categories

Product	Current categories	Proposed sub-categories
Taps	Tap only Outlet only Tap and tap outlet	Mixer taps Combination tap sets Taps and outlets supplied separately
Toilets	Suites Combination of pan and cistern Combination of pan and flushing valve Pan Cistern Flushing valve	Suites & combinations Cisterns & flush valves Pans

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Showers	None	Hand held Fixed showers Dual head showers
Urinals	Urinal suite (flush valve) Urinal suite (cistern) Urinal only Flush valve Cistern combination of urinal and flush valve Combination of urinal and cistern	Suites and combinations Urinals Cisterns & flush valves
Flow controllers	None	None

Note there are no sub-categories suggested for whitegoods.

b) Registration process to be streamlined

- Registration process enhancements, including greater use of self-declarations in registrations and possible on-line payments
- An improved on-line system to make the process faster and more user-friendly
- Removing the need to Gazette registration decisions to make the registration process faster.

c) Compliance and enforcement changes

- Introduction of civil penalties and a range of other compliance responses. These would include for example, orders requiring new and corrected labels, suspension and deregistration of products, directed audits.
- A failure to implement the following new requirement would be an offence:
 - providing registration documentation at each step of the supply chain (except for transactions involving consumers).
- It is proposed to increasingly focus compliance efforts more broadly across the supply chain, i.e. wholesalers, developers and on-line suppliers.

d) Transition arrangements from current to new scheme

- All registrations in the existing scheme will be cancelled and all continuing products will need to be re-registered under the new scheme. A number of alternative transition arrangements are being considered.

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1. How were the new fees calculated?

- Primarily using the existing registration data in our database. This gave us information on how many new models registered each year, 'drop-out' rates, average numbers of different products in a registration etc. The department used independent consultants to model the 4 fee options using this data set. There is also an allowance in each fee for some behaviour changes that may result from each of the changed fee structures.

2. It seems it would be simpler to charge all registrants a 'flat' annual licence fee to participate in the WELS scheme. Why isn't this an option?

- At present there are around 400 registrants actively participating in the WELS scheme. To recover the first year's contribution from industry would require a 'licence fee' of some \$3700 pa. which would need to be adjusted if registrant numbers rose or fell. A fee of this level equates to registering 80 products (Option 2), 88 products (Option 3), or 46 products (Option 4).
- This cost recovery option is somewhat simpler to administer, however it would still require that the database be accurate and complete, for consumer information and compliance purposes. Some stakeholders, such as those who only have a few WELS products to register, may feel that this option does not best align fees to the registration 'effort' or the size of a company's presence in the scheme.

3. Are the fees now 'fixed'?

- The fee levels have been calculated as accurately as our data set allows. When we start populating the 'shadow' database (see Q 22) with the new registrations, we will have a better idea whether the new fee structure will recover the planned 80% of the Scheme's operating costs. At this point, there is a possibility fees may need to be adjusted.

4. Why not look to scrapping the current WELS scheme or replacing it with something like New Zealand's WELS arrangements?

- The terms of reference of the independent review of 2010 gave the reviewer the task (amongst others) of examining the continued relevance of the scheme and its legislation. The scheme was found to enjoy wide support and the recommendation to continue an improved legislated scheme was supported almost universally by stakeholders, and by all governments.

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- A legislated scheme provides a specific compliance framework, with offences and penalties tailored to the scheme. Without legislation, offences need to fall under the general consumer protection framework. The highest profile industry feedback items relate to unlicensed products being sold through non-conventional supply points and it is suggested general consumer protection mechanisms may give such matters a lower profile than dedicated WELS inspectors.
- A legislated scheme provides for regular review, independent audit, oversight by elected persons and full reporting.

5. What happens after 3 years? – I notice all your planning ends in mid-2015.

- Within that time period we'll commence a new planning cycle, consulting with you as we go. It's probably likely that the emphasis of that planning will be on how the scheme operates in the context of the two related schemes – the E3 and WaterMark arrangements.

6. What happens after February 29? Do we get another chance to input to the scheme design or legislation?

- Formal consultation closes on 29 February 2012 and a submission by that time maximises the chances that the content of your submission can be considered and, if appropriate, influence the scheme's legislation. Further formal consultations are not planned, but the WELS team is always happy to receive feedback on any aspect of the existing or planned arrangements.

7. What are the effects of these changes on my company?

- The two most noticeable effects will be changes to the registration period and the registration fee itself. Products will be registered for one year, with options for two or three year registrations possible. The present fee of \$1500 (which covers five years) will change depending upon which of the four registration options is selected after public consultation. Refunding of remaining current registration fees is also an option canvassed in the consultation paper.
- Once the parameters of the new scheme are settled, we will be contacting every registrant with a list of the items they presently have registered in the scheme and asking if they require these to be 'rolled over' into the new scheme. At that time we will also provide an estimate of the new cost of registration.

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8. When will the new fees start?

- The new arrangements are expected to take effect on 1 July 2012, subject to the parliamentary process.
- Note that the new fee arrangements cannot formally begin until the legislation is passed by the Parliament; existing arrangements will continue until that point.

9. What happens if about half the registrants prefer one fee option (say, Option 1) and about half, say, Option 4?

- Although it is likely that different stakeholders will express preferences across the spectrum of options, there will be only one registration method adopted for WELS registration. This will be determined by the department taking into account stakeholder preferences, reliability of revenue generation, equity considerations (i.e. between small and large registrants) and administrative complexity for all stakeholders.

10. I understand all variants of a model need to be in the registration database. Most variations with taps (e.g. some spout configurations, handle type, cosmetic differences in finish etc) have little or no effect on water use. Why should I have to register all these variants? Is it just revenue raising?

- We recognise the point that water-efficiency/performance may be unaffected by such differences. However, a significant shortcoming in our present scheme is the inability of consumers and retailers (and our compliance staff) to accurately identify products 'on the shelf'. The consumer-orientation and utility of the scheme will only be fully realised if all WELS products can be clearly identified through a unique identification number.

11. Why do you need to change the fee structure?

- Governments have decided they require the scheme to achieve the cost recovery target initially set for the scheme of 80%.
- Past cost recovery has been at around 20-30% and this degree of under-funding was making the scheme unviable.
- Underfunding was occurring because:
 - On average over the last five years only one model in eight has attracted a fee.
 - There have been many more models registered than originally envisaged, including single registrations that cover entire series or ranges of products.

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- The scheme has cost more to run (due to the far higher number of registrations and because the original budgets did not provide for compliance and enforcement staff).
- Inflation had reduced the value of the registration fee.

12. Why should industry pay 80% of the cost? Why doesn't the Government pay more or all?

- The scheme was originally set up for governments and industry to jointly fund the scheme. The new arrangements continue that philosophy, as, from an economic perspective, the WELS scheme has both 'private' benefits and 'public' benefits. This means that partial recovery of the scheme's costs from industry is appropriate. An example of a 'private benefit' is the savings in water bills a consumer makes through using a water efficient product (thus registrants may wish to pass on registration costs to their customers). A 'public' benefit may be the lower investment in water infrastructure that is required if overall demand for water is lessened by, amongst other factors, the cumulative effect of installing water efficient products.

13. Will stakeholders then see improvements in the 'new' scheme?

- Yes, there will be improvements in a range of areas. For example, the registration process will be improved, through streamlined registration processes, which will be supported by:
 - the establishment of a new user-friendly database and
 - implementation of check testing of products will lead to improved compliance and integrity of the scheme.
- We are also estimating savings of 11 per cent in running costs in 2012-13, arising from these improvements. We are committed to ensuring that the scheme is efficient.

14. What happens if too much or not enough money is raised?

- It is quite difficult to forecast revenue from a scheme such as WELS, so it is possible that fees may actually be underestimated or over-shoot the first year revenue target of just under \$1.5 million.
- Small unders or overs would be treated as a 'carryover' float for the following year.
- Larger variations, however, may require the fees, and/or contributions from the Commonwealth, States and Territories to be adjusted. A further possibility is that the scope or activities under the scheme could, by agreement, be adjusted.

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- The scheme is forecast to require an increase in running costs of 3% each year over the 2012-15 period and fees levels have been calculated to include this.

15. Why are the fees the same for cheaper and expensive products?

- Fees charged must be equitable, and related to the costs of government administration, for example, registration. In general, it takes the same amount of time to complete the registration process for a tap, for example as it does for a top-of-the-line dishwasher.

16. How is the scheme's budget for next year made up?

Next year's budget is set at \$1.85m, down from the \$2.03m base budget of this financial year. The budget provides for a regulatory team of twelve staff and for supplier expenses including checktesting and proficiency testing, communications, standards development, WELSAG and WELSOG secretariat, and legal expenses. The cost breakdown is:

Staffing and associated overheads: \$1.48m

Supplier expenses: \$0.37m

TOTAL \$1.85m

17. The independent review recommended separately administering the whitegoods and plumbing products. Why hasn't this been done?

- Whilst this change hasn't gone ahead at this time, it is still under review. The Equipment Energy Efficiency (E3) scheme, run by the Department of Climate Change and Energy Efficiency and the WaterMark scheme, now run by the Australia Building Codes Board (ABCB) are themselves being reviewed and/or are about to operate under new legislation. Recent machinery-of-government changes to the 'Industry' Portfolio (where the ABCB was located) may also have a bearing. Discussions to split whitegoods and plumbing products can commence when these changes have bedded down.

18. Why isn't the family of models provision being fully maintained in the new scheme?

- The current family of models provision, particularly the free additions to existing families has meant that the cost of the scheme has fallen unequally between those registering a few products and those making extended use of 'family of models' provisions. With a limit of 15 related products (Options 2 and 3) we create a more equitable user-pays

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system, where those who register more products pay a greater share of the scheme's costs. Neither Options 2, 3 or 4 allow free additions to registrations.

19. What new offences will be created?

- It will be an offence to supply a WELS product (other than to a consumer) without providing evidence of registration. Vertically integrated retailers would still be making registrations, but this will encourage registrations to occur higher up in the supply chain, and ensure those at the end of the chain, such as retailers, are less likely to be provided with unregistered stock.

20. What is the difference between civil and criminal offences?

- The important difference is about the level of evidence required. Criminal offences must be proven 'beyond reasonable doubt'; however, civil offences have the lesser requirement of 'on the balance of probabilities'.
- Also, cases of criminal offences are referred to the Commonwealth Director of Public Prosecutions for possible prosecution, whereas the decision to pursue court action for civil offences rests with the WELS Regulator.

21. What additional penalties may be introduced?

- It would be administratively simpler if alleged offenders could be provided with orders to undertake activities, rather than the department having to negotiate enforceable undertakings (EUs) to achieve the same outcomes e.g. 'undertake audit of stock to ensure WELS compliance'.
- It is proposed that civil penalties will be introduced as well as a range of new compliance responses. These would include orders requiring new and corrected labels, suspension and deregistration of products and directed audits. New requirements will also be introduced to provide evidence of registration at each step of the supply chain.

22. Will you be doing more compliance?

- We will not be doing markedly more compliance per se, but compliance activities will be re-focused more broadly across the supply chain and strengthened in several ways:
 - we will increasingly focus on suppliers who are wholesalers, importers, developers and on line suppliers.

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- check testing will be introduced, where the cost of retesting 'failed' products will be borne by the registrant.
- streamlining the registration process and the registration database will have benefits for compliance in that registrants will more easily be able to track the registration status of their products and inspectors will be able to undertake registration checks in the field.
- we will have a more flexible range of compliance responses available to us, allowing penalties to be tailored to the nature of the offence and allowing for a rapid compliance response to be executed.

23. What about advertising of products?

- It is proposed legislation will continue to make it a requirement that advertising materials on the internet and in printed form will include WELS information about the products, and WELS staff will continue to take action on these matters on a case by case basis.

24. Who will be able to register products?

- We propose to simplify the administration of this by allowing anyone with proper documentation (such as test reports and Watermark certification) to register a product.
- To ensure that the responsibility for registering products remains the responsibility of those higher up in the supply chain, new requirements are proposed that suppliers must provide to their buyers, at time of sale, evidence of WELS registration, and that both parties keep that evidence for WELS compliance purposes. This requirement will not apply to transactions involving consumers. In this way, parties will also be able to demonstrate that they sold products in good faith in any instances where their suppliers provided false evidence of registration.

25. How will registration be improved?

- Registration will be simplified and made as close to a self-declaration process as possible. Risk-based audits will be used to measure accuracy of information provided in registration applications. The database will provide a streamlined application form, with increased functionality for clients such as:
 - easy copy and paste functions

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- improved information and tracking facilities for registrants
- automation of many functions
- sample labels may be generated by the database
- Re-registration is intended to be a very simple process, involving payment of the fee, an annual declaration that the registered products have not changed and uploading new certification where applicable.

26. Will I have to re-enter all my registration data for the new scheme?

- Generally not. We will contact you with our record of what products you presently have registered. You will need to indicate if this list is correct, or if changes are required. The new guidelines can then be used to 'roll over' your registrations into the new database. At this point, the new database would be a so-called 'shadow' one, i.e. it is populated with data, but not yet operational. These registrations would take effect when the new arrangements officially commences. The WELS team will work with you in this process.
- You will need to make sure that you have test reports and/or WaterMark certification that demonstrate your products have met the current WELS standard. If you need to have products re-tested to the new standard it may be advisable to start the process sooner rather than later.

27. Why is annual registration proposed? Isn't this a lot more trouble than longer registration periods?

- Annual fees keep the database current for all stakeholders and minimise industry paying to register products no longer in the marketplace. Annual fees are proposed to keep pace with inflation and not lose significant value over time, as the present 5-year fees do.
- We are determined to make the registration and re-registration process as straightforward as we can. Much of the registration data now in the database will be transferred across into the new database, after checking with registrants if changes are required. If registration details have not changed from year to year, re-registration is largely a matter of making a declaration to that effect.
- There may be the option of registering a model for up to three years.

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28. Will I be able to 'consolidate' my registrations under Options 2 and/or 3 , i.e. register 10 products in January and then put another 5 products (up to the limit of 15) into the same registration six months later?

- The principle of 'no free additions' applies, so the answer is 'no'. In the case described above, the second tranche of 5 complying products would be a separate application, attracting a separate fee.
- In the above example, when the first, January, registration expires the following January the 5 complying products could be added, if desired, at this point and the one fee paid (e.g. \$630) covering all 15 products. There would be no credit for the period of registration 'unused' by the 5 products under this arrangement. However, this consolidation arrangement would result in total fees of \$2520 being paid over 3 years, rather than \$3780 if the products remained in two separate applications throughout (on the basis of an annual fee of \$630).
- In summary, the rule is that a consolidation of a registration (bringing one or more paid registrations together in the one registration) can only occur when the first registration is due for renewal.

29. Why replace the organisation's licence number with the brand name on the label?

- Putting the brand name on the label will give better information to the consumer and retailers and will protect the integrity of your brand. It will also assist with identifying non-compliance.
- The 'licence' number will still exist, although not on the label. Consideration is being given to making the registration number more useful, perhaps by using identifiers for registrants/suppliers, category of product covered by the registration etc.

30. Are there changes to the certificates I need to provide with my registration application/s?

- There is no change to this requirement. Requirements will continue to be a testing certificate from a NATA accredited laboratory and a WaterMark certificate, where applicable. A WaterMark certificate is required by WELS for flow controllers, tap, urinal and lavatory equipment, and showers.

31. Why do I need WaterMark certification to register my products?

- It is a legal requirement outlined in Section 7 of the WELS Determination 2011. WELS only requires a WaterMark certificate for WELS products other than whitegoods.

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- WaterMark is a product quality certification mark provided by independent certifying authorities. It confirms that the product complies with the Plumbing Code of Australia and the relevant Australian Standards, which relate to product quality, including health and safety, and warrant that it is fit for purpose.
- WaterMark certification is mandatory for products to be legally installed in accordance with state and territory plumbing regulations. Products required to be certified are listed in the Plumbing Code of Australia and AS3500.

32. Why make changes to information on WELS labels?

- It is proposed that the brand name appear on plumbing product labels in place of the licence number. (Whitegood labels already include the brand and model name). Changes to WELS labels are necessary so the models produced by your company can be readily identified by the consumer and retailers. Changes to labels to include brand, model name and number, WELS registration number as well as star rating and water efficiency were recommended by the WELS Review.
- Including the brand name on WELS labels will protect the integrity of your brand, and minimise 'free riding'. The changes to labels will help to make the scheme's compliance arrangements more efficient and effective.
- Changes to the labelling of WELS products would be pursued through changes to the WELS Standard rather than through the Act. Label changes would be introduced in a way that allows adequate time for companies to make the change. The process to change the WELS Standard through Standards Australia has not yet been initiated, and a proposed date of effect is to be determined.

33. Will the WELS standard be updated?

- Yes, over time. The department's preference is to remove the 'non-technical' elements from AS/NZS 6400, leaving the Standard to focus on technical matters. The 'non-technical' or policy matters would then be addressed through the legislation.

34. Will the new Standard look only at water-efficiency matters?

- This is an open question which will need resolution over the next 6 months. It has been suggested that the Standard should focus only on the water consumption/efficiency of a product (e.g. that a shower uses 9 litres per minute) as opposed to its general performance (e.g. the mean spray angle). Put another way, should a WELS label signify

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only or primarily the water use of the product, or should it send a signal that the overall performance of the product has been 'government endorsed'?

35. What's proposed for check testing?

- To protect the integrity of the WELS scheme, targeted testing of products will occur to ensure that the information provided on WELS labels reflects the actual performance of the product. It is proposed that, where a product is check-tested against the WELS Standard and 'fails', the registrant could pay for further independent testing should the initial result be disputed. This should potentially increase the amount of check-testing WELS is able to do with limited resources.

36. Why change the grandfathering rule?

- The current rule leads to unintended consequences, giving the Regulator less control of registrations, including extending all registrations under certain circumstances.
- Proposed new grandfathering rules will be simpler. It is proposed that either the Minister will be able to modify the grandfathering period for any or all WELS products (e.g. in response to submissions from industry) or there will be indefinite grandfathering of items already imported into Australia or manufactured here prior to the standard being changed. Submissions are sought on this point.
- Note that a product must always be registered when offered for sale.

37. What are the changes proposed for the Gazettal requirements?

- Currently, registration becomes effective when a Government Gazette notice is published. This can delay the registration process.
- It is proposed that the new legislation will allow the Minister to determine where registration decisions will be published. We expect that the Minister would formally nominate the WELS public database as the publication point, which we anticipate will save registrants' time and publication costs.

38. Are there any plans to expand the scheme to bring in more water-saving products?

- The Strategic Plan has outlined the timeframes to consider new products to be included into the scheme. After the new arrangements are satisfactorily bedded down, it is anticipated that focus would initially be on reviewing the rating system for showers and the introduction of evaporative air conditioners into the scheme.

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- There is also scope in the future to consider inclusion (although not rating) of products that do not use water in the scheme e.g. waterless urinals.