



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE

Reference: Regulation of plumbing product quality

THURSDAY, 13 SEPTEMBER 2007

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON ENVIRONMENT AND HERITAGE
Thursday, 13 September 2007

Members: Dr Washer (*Chair*), Ms George (*Deputy Chair*), Mr Broadbent, Mr Entsch, Ms Hoare, Mr Jenkins, Mr Kerr, Mr McArthur, Mr Ticehurst and Mr Wood

Members in attendance: Mr Broadbent, Mr Entsch, Mr Kerr, Mr Ticehurst and Dr Washer

Terms of reference for the inquiry:

To inquire into and report on:

The regulation of plumbing product quality in Australia, examining in particular:

- the appropriateness and effectiveness of the current plumbing product quality regulatory arrangements
- scale of environmental benefits from controlling plumbing product quality
- trade implications of controlling plumbing product quality
- potential improvements to the plumbing quality regulatory system
- the appropriate level of government to administer plumbing product quality regulation, that is, the states (as is now) or the Commonwealth.

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Committee met at 10.48 am

ABERCROMBY, Mr Noel, Board Member, National Plumbing Associations Alliance

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COATE, Ms Carmel, Executive Director, Plumbing Products Industry Group

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FORBES, Mr Malcolm, First Assistant Secretary, Water Resources Division, Department of the Environment and Water Resources

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NAYLOR, Mr Paul Edwin, Secretariat, National Plumbing Associations Alliance

SHEPHERD, Ms Claire, Acting Director, Water Efficiency Section, Water Policy Branch, Water Resources Division, Department of the Environment and Water Resources

SIMMONS, Mr Craig, Nominee (Committee Member), National Plumbing Regulators Forum

CHAIR (Dr Washer)—Thank you for coming today and joining in the roundtable discussion for the House of Representatives Standing Committee on Environment and Heritage inquiry into the regulation of plumbing product quality in Australia. Firstly, we would like to thank you for your submissions. They were provided within what was a tight time frame. Since accepting the minister's referral and starting the inquiry, this committee has been impressed by the quality of evidence received and is pleased to be able to hear from you all today on the effectiveness of current regulatory arrangements for managing the quality of plumbing, what improvements might be needed and how they can be achieved. With this ambitious program and tight time frame, you will appreciate that, while each group will be given a couple of minutes to make a few introductory remarks, these remarks should be absolutely no more than five minutes. There is no need to reiterate the material in your submissions in these introductory remarks. You may like to use this opportunity to highlight themes you think need to be addressed in the ensuing discussion. You will have an opportunity during the discussion to contribute and expand on points as we consider some of the key themes.

While we hope that the roundtable will be more interactive than normal proceedings, I should still advise you that Hansard is making a record, which we propose to publish, and that the roundtable is considered to be a formal proceeding of the parliament. Consequently, it warrants the same respect as proceedings of the House itself. The committee will not require you to give an oath, but please be aware that giving false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. This should not, however, prevent you from putting forward your opinions or speculating about the best way forward. I invite a representative from the Department of the Environment and Water Resources to make a five-minute presentation.

Mr Forbes—I will make a very short statement, Chair. We put in our submission only yesterday. We apologise for the delay in that but it was important for us to try and work through a solution which we thought could be longstanding. In that context, we think we have come to a position which may be helpful to the committee. We thank you for the opportunity to appear before you.

A few contextual remarks might be helpful. The WELS Scheme commenced in 2005 as an outcome of the 2004 National Water Initiative with the explicit purposes of conserving water supplies by reducing water consumption, providing information on the water use and efficiency of products, and promoting the adoption of efficient and effective technologies. The scheme was developed only to provide labelling information about the water efficiency of products and to establish minimum water efficiency standards. It was deliberately established to be independent of the Plumbing Code of Australia, the primary instrument for regulating plumbing product quality, which is managed by the state and territory governments. It is interesting that your terms of reference relate indeed to product quality; water efficiency is only a part of those terms of reference.

The underlying question being considered today is whether the WELS Scheme and the Plumbing Code, to which the WaterMark applies, properly intersect and, in particular, whether it is appropriate for products that do not have WaterMark Certification to be registered under the WELS Scheme. Currently, this is possibly around 15 per cent of WELS products, as provided in our submission. The department recognises the need for a pragmatic solution to the issue which we consider can be achieved without a change to the scope or objectives of the WELS Scheme or to the state and territory government responsibilities for regulating the Plumbing Code.

As outlined in our submission, the establishment of minimum water efficiency standards for all WELS products would remove from the market the WELS products that do not meet criteria common to both schemes—that would probably be 10 per cent of the 15 per cent that I mentioned earlier. In relation to the residual five per cent of WELS products that are not WaterMarked, the department can work with state and territory plumbing regulators to provide relevant information that will inform their compliance activity in relation to the Plumbing Code. If that can be worked through appropriately, we would hope that that five per cent would be at a bare minimum, if noticeable at all. On that basis, we think we have found a practical way forward which would allow both programs to intersect appropriately. That work to establish minimum water efficiency requirements would clearly need to be done, and that *work* has already commenced.

CHAIR—If you are agreeable, we will take all the submissions and then we will have an interchange of information and questions. I invite Mr Craig Simmons from the National Plumbing Regulators Forum to make a few brief introductory remarks.

Mr Simmons—Thank you. I am the ACT Construction Occupations Registrar and represent the National Plumbing Regulators Forum today. My submission hopefully will be brief. Simply put, we as regulators like to minimise any confusion in the market, be that for the people we license to undertake this activity or consumers in the market. At the moment the issues that raise themselves between WELS and WaterMark standards provide a level of confusion so that there is product which is being bought by consumers to be installed by licensed people but cannot be installed. It is a significant enough issue for it to come to our attention on a regular basis. Our contention is that inconsistency between the two product marking standards, WaterMark and WELS, needs to be resolved, sooner rather than later. So any advice that can be brought to bear by the people here today to assist us in that we would be most supportive of. When it comes to the further issues for the committee, we are generally of the belief that the regulation of plumbing installation and product and its use in the country is best regulated at the state and territory level.

CHAIR—Thank you. I invite the representative from Standards Australia to make a few comments.

Mr Blair—From the Standards Australia point of view, we develop standards which underpin the WELS scheme and the WaterMark scheme. We are also responsible for the administration of the WaterMark scheme. Basically where we stand is that we are here to cooperate and assist where possible with the delivery of positive outcomes as a result of this morning's meeting and going forward from there.

CHAIR—Thank you. I invite the representative from the National Plumbing Associations Alliance to make a few comments.

Mr Abercromby—I represent the alliance and I am from the Master Plumbers Association of Western Australia. From a contractor's point of view we are really on the coalface, where we have the confusion between the WELS approval and the WaterMark approval. All our installation of product at state level is a WaterMarked approved product. We are not allowed to install non-WaterMark product. As a complete look at the thing, we would be seeking to have the WaterMark put as a prerequisite for a WELS approval so that there is no confusion for consumers who are buying product independent of the contractor and then are unable to get the contractor to install it because it is not WaterMarked. So we are in agreement so far with what has been said—that there needs to be a tie between the WaterMark and WELS systems.

CHAIR—Thanks. I invite a representative from the Plumbing Products Industry Group to say a few words.

Mr Flynn—I am the President of the Plumbing Products Industry Group. We represent a significant number of the manufacturers, importers and distributors of plumbing products in Australia and New Zealand. It is the belief of the membership that the NPRF needs to be set up in a more formalised and better resourced fashion, including a significant level of industry involvement so that it is not developing policy in isolation.

It is also the belief of our membership that the WaterMark needs to be the minimum requirement for plumbing products to be sold into the market as a guarantee of safety and fit for purchase by the end user. To this end we also believe that the WELS scheme should require WaterMark as a minimum requirement of approval. Industry would also welcome an improved enforcement regime, including up to point of sale legislation if appropriate on WaterMarked product. It is a belief of our members that we are currently paying licensing fees for WELS and for WaterMark products with an expectation that non-conforming product will be identified by means of audit as covered by the licensing fees and if appropriate removed from sale.

We believe the public also has a right to expect that a government sanctioned mark such as WELS or WaterMark will ensure that the consumer is getting a level of safety and health and fit for purpose which currently the WELS mark in itself does not guarantee because of the absence of WaterMark.

CHAIR—Thanks. I invite a representative from the Australian Electrical and Electronic Manufacturers Association to make a few comments.

Mr Fogarty—I start with the view that requiring plumbing safety is a no-brainer. Consistency across Australia is the same thing—I am sure everyone is going to agree on that. Confusion at the coalface is there; everyone wants that eliminated. The main area we want to talk about is the lack of enforcement that is happening in the marketplace at the moment. Our members make appliances rather than just plumbing fittings—they make things like washing machines and dishwashers. Our experience in this market is that there has been significant change over the last few years and that the lack of enforcement is actually going against mainstream brands. The way the current legislation and the enforcement regime are, they encourage people who actually break the rules. They do things like event marketing—a retailer will have a product for sale; he will bring in a thousand washing machines and advertise them in a magazine like this, he will have them for two weeks and then he will have sold a thousand washing machines. By the time the poor WELS regulators do their check, even if they manage to buy one of that thousand, the machines are off the market. The brand name was Mezzo—and I do not think many people know that name, nor would they know it in the future. If they are found to be non-compliant they are off the market; they are a two-dollar company and that is it. So the clever part of how you address this issue is not the bits we are going to agree on but how you do effective enforcement.

CHAIR—I invite Mr Stuart Henry MP to make a few remarks, but before you do I thank you for your input and stimulation to make this meeting occur.

Mr Henry—Thank you. I would like to make two or three points. The first one, to reinforce the real value of making sure that plumbing products that are available for use in the marketplace are properly accredited and certified as to their value and import, is demonstrated very clearly by the SARS outbreak in Hong Kong in early 2000, in particular Amoy Gardens, where the plumbing product installed at that time broke down and allowed the spread of SARS. Just recently here in Australia we have seen how quickly equine influenza has spread from Japan to Australia. That is a demonstration of how quickly disease can travel in this world today where people and animals move very quickly from one country to another. There is a lot of detail; I have not submitted that detail. This is in addition to anything I have put in my submission.

The other point I would like to make, which is a qualification on my submission, is that I suggested that the National Plumbing Regulators Forum might be an appropriate body for the management of the water efficiency labelling scheme. What I would like to propose is that the committee consider the establishment of an Australian plumbing code board that would have effective national responsibility for a range of standards for WaterMark, for the water efficiency labelling scheme, and that it be funded and structured similarly to the Australian Building Codes Board. I think that would go a long way towards addressing the issues and the conflict between the regulators and the regulation of these sorts of issues.

Another point I would like to make is that perhaps all products should be point-of-sale certification and accreditation rather than the WaterMark, which actually applies to the installation of product, and the full responsibility falls on the licensed plumber. That would ensure that all product was properly accredited before it was available for sale and would take a lot of the pressure off plumbers and the confusion off the marketplace in terms of what product is appropriate and what is not. The other point is that in any event, as I have mentioned in my submission, WaterMark should be a prerequisite for the water efficiency labelling certification.

CHAIR—Thank you.

Mr Kefford—Thank you for inviting me. I think my short submission says all I want to say but I will pick out the highlights. I heard the contextual remarks earlier by the department. People say ‘confusion’, but I would say the WELS scheme is misleading to the average consumer who buys a product with a Commonwealth stamp on it and a few stars and then finds to their frustration that the plumber will not fit it because it is nowhere near the mark. I advocate in my paper that WaterMark become a prerequisite for WELS.

I also suggest that the cost of WaterMark today would not increase if the third-party certifier was required to do the few extra things that are required above WaterMark testing to enable it to meet the WELS requirements. That would give some further credibility to the combined scheme. I support the ABCB model and suggest to you that perhaps you would care to look at a PCB model which gave some certainty to everybody, given that the state and territory regulators manage licensing and those sorts of things. The ABCB has proved over a number of years to be able to pull it together with some support and money, whereas I think any criticism of the National Plumbing Regulators Forum at the moment might well be sheeted back to how it is funded, what staff it has behind it and whether people are doing it part time on top of their normal job, which makes it very difficult. Mr Henry has already raised the SARS issue. I raise it in my paper and I think there is real justification for this committee to meet and for this committee to consider the issues. Thank you.

CHAIR—Thank you very much. That is great. We will open to some questions and an exchange of ideas. Can I get Mr Forbes from the Department of the Environment and Water Resources to comment on what has happened?

Mr Forbes—While there are a number of issues, essentially the biggest issue is probably the prerequisite question. Then I think there is an enforcement issue. These would be the two key issues. There are also some issues about—and this is an undercurrent here—whether this a Commonwealth related activity overall or a state based regulatory thing. There are complications in both those issues. I think it was Mr Simmons who indicated the need to ensure that the state

based regulation, the licensing, was appropriate to continue. It is certainly our position that that is the case. The issue then is to make sure you try to get linkages between the state regulations, which are essentially associated with WaterMark, and those which sit at the Commonwealth level.

We are quite conscious of the dilemma which consumers face. That is this issue of the 15 per cent—about 15 per cent of products appear to have WELS certification or WELS labelling and not to have WaterMark. Some of that 15 per cent may not necessarily meet the standards associated with the plumbing code, although some of that 15 per cent could meet the standards—it might just be that some of those manufacturers and the like have not actually gone through a process to get WaterMark certification. That is an issue, if you like, in terms of a state based regulatory question, not necessarily a Commonwealth based one.

Let us come back to the prerequisite issue: when you come to putting in WaterMark as a prerequisite to WELS registration, you have a legal issue that is quite significant. Our legal advice is that it is not possible without significant changes to the current legislation. We would end up having, if you like, other parties in control of the minister's responsibilities, and it fetters the minister's powers. As a result, you end up invalidating most of the activities which sit under WELS and therefore the enforcement issues, which Mr Fogarty is raising, will have no validity whatsoever. So there is a significant legal question which we have to deal with, and we do not think a prerequisite arrangement will work. That is why we are thinking of a solution which looks at minimum requirements—under the WELS scheme you do not accept zero ratings. They have to have a rating of one or more. That requires changes to our current requirements and new determinations under the legislation.

Once you move towards making sure you do not have any zero rate of products on the market, you take at least 10 per cent of products out those of the market. That leaves a residual five per cent. As I mentioned in my beginning remarks, we are confident that—in close cooperation with our state regulatory colleagues, good compliance activities associated with that and education—that five per cent can be reduced to an absolute minimum. I think that would overcome most of the problems which have been placed on the table this morning. It covers off the fact that we need state and territory regulatory powers with regard to that. We need the Commonwealth ones. We need to make them complementary but in a way which covers off the issues so consumers are not confused. We think we have a solution to be able to move forward on that.

CHAIR—You mentioned we have big problems in the regulation of this. What do you suggest we do to overcome it?

Mr Fogarty—Surprisingly, I agree with Malcolm. At the moment, we believe that the act is quite legalistic and it makes it very difficult for Malcolm and his team to get effective enforcement. We would like to see more flexibility. The issue that I raised before is that industries will take advantage of the situation and they will be very quick—in and out. Malcolm and his team would have to make just about a full legal case to prosecute, and by then it has gone. I would look at the enforcement issue. We need to be able to say that they are complementary with the state ones, are not tripping over each other and are flexible enough to enable his team to make efficient enforcement. We are talking about things like washing machines and dishwashers, water heaters and those sorts of appliances. They are big. With showerheads, taps and fittings, someone can bring a container load in and do a lot of damage,

which is what is being alluded to. It would be very difficult to keep track of that. If we are seeing it—and we have had the problems with large appliances—I would suggest that with taps and fittings it would be even worse. I think that, whether it is state or federal, you have to give them the tools—we do not care as long as they are consistent—to be able to enforce it; otherwise it is a nice piece of paper but it is just bureaucratic nonsense.

CHAIR—Thanks, Terry. If you are agreeable, my colleagues will ask some questions and then you can make a brief comment on what you think we should do as legislators.

Mr TICEHURST—From what I am hearing, would it be fair to say that, where we have licensed plumbers involved with products, we essentially have low risk but, where we come to retailers dealing directly with consumers, there is no onus on the retailer to make sure the products comply with WaterMark or the Australian standards? Is that a fair assumption?

Mr Abercromby—Yes.

Mr TICEHURST—So the issue then becomes: how do we make the retailer responsible for the products it sells?

Mr Abercromby—I can respond to that. You are exactly right: the onus is put on the licensed plumber. That is what I mentioned in my opening comment—that the plumber gets put in a situation where he is sort of fighting between the consumer, who has bought products separately, and the standards. I will take on what Stuart said earlier—that the legislation probably needs to be directed at the retailer. The legislation should make it that the WaterMark or WELS product is the only product that can be sold, so that the consumer can only access a product that can be installed.

There is some anecdotal evidence that some suppliers sell plumbing product that is not approved. They sell it and say, ‘We’re not necessarily selling it as plumbing product; we are selling it as decoration. What someone does with it is then their problem.’ So they are just handballing the responsibility on. But, as I said, I think it should go back to the retailer; they should only be allowed to sell WaterMark or WELS product.

Mr Simmons—To give you a real-world example: you could go out to a large plumbing products supply place in Canberra at the moment and buy a unit which is capable of diverting your grey water below the sink. Grey water diversions have become surprisingly popular—for reasons which somewhat escape me at the moment, but they are popular. The device is not WaterMarked. It is not a complicated piece of work to do, to get under your sink, unscrew the piping and insert this device. Licensed plumbers obviously would not do that because they would know it was not a product that they could install. There is a question there about whether or not we, as the regulator, could actually catch them if they chose to do that, and that is difficult. But it is impossible for us to get the homeowner, who—having watched far too many shows on TV about how to do plumbing or electrical and building work—gets a bit keen, takes the hacksaw out and does it, and then is, potentially, diverting grey water, which has a number of issues attached to it. The homeowner has walked into a plumbing supply place or Bunnings or our local version, Magnet Mart, and bought this product that they think is okay because if it were not okay, why would it be being sold? That is a real problem that happens quite frequently.

Mr TICEHURST—On the AEEMA side, of course, when you are talking about electrical appliances, you have the electrical issue as well as the plumbing issue. So if we have a situation like the one you mentioned, where you have 1,000 dishwashers or washing machines or whatever coming in, they are into the market before you know it, and of course if there is no onus on the retailer then you cannot guarantee electrical safety, which is a safety standard probably more onerous than the one for plumbing.

Mr Fogarty—Your statement is quite correct. What we would say is: you would have to stop them coming into the country because, once they are in the country, trying to enforce it on retailers in our industry has proven to be very difficult. Once they are in the country you can never find out who is retailing them. So I would guess, with showerheads and things like that, you would bring them in and sell them to your friends and not through your normal major plumbing retail outlets. So I can understand what you are saying about retailers but our experience has been that once a product is in the country you cannot find out who is retailing it.

Mr TICEHURST—So, really, you are looking at the importer, the distributor and the retailer—the whole chain?

Mr Fogarty—Yes.

Mr Flynn—I will answer that, too. The Plumbing Products Industry Group sees another dimension to this. The WaterMark is partly a guarantee of safety and risk management, including things such as contact with potable water and so forth. We have seen the example recently of Mattel recalling toys with lead content; that is a graphic example of what things like the WaterMark guarantee against. If something like a WELS label gives some sort of belief that there is a complying product of some description, without the WaterMark to back it up, then you have issues of contamination of water, and public health and safety, which are not being addressed adequately by the WELS label. As we mentioned, part of what the public has a right to expect, I believe, is that that government-sanctioned mark actually gives them some confidence to fit this product.

Mr ENTSCHE—To Standards Australia on this, there is a range of products that we bring in to this country that have to meet a certain standard before they are allowed to be brought in or sold in this country. I would assume that electrical appliances is one—if it does not meet a certain standard—there is a whole lot of them. Why couldn't the same thing apply to plumbing products? That standard could be meeting WaterMark as a minimum standard and they are not allowed to be brought in otherwise. I do not quite understand. Clearly it is a substandard product; they bring them in and flog off a container full of them and then just disappear—and you are seeing more and more of that. I see it in the electronics now. There are companies setting themselves up, but all they sell are these non-identifiable brands from the north. It is having a huge impact on our Australian manufacturers and other manufacturers who are compelled by law to meet a certain standard. Is there anything that can be done there?

Mr Blair—I think in terms of compliance with the Australian standards, while we develop the standards in conjunction with industry and government it is really the compliance side that is the key. Does the government say, 'Look, before it comes into the country you have to demonstrate you have compliance,' or other than that is it the plumber who says 'Before I put it into the system it has to demonstrate compliance' or the consumer who says 'Before I buy it'? So at the

end of the day, although we have the standards in place it is the compliance that is the issue. Someone being able to demonstrate that in fact a product does comply to the Australian standards is the key.

Mr Kefford—There is an issue with the stuff coming into the country. Part of that issue might well be an ill-informed marketplace at the retail and wholesale levels. There are big chains of hardware stores that have recently moved container loads of copper tube off their shelves because it was pointed out that if they did not remove it somebody would make them remove it. They should not even have got there in the first place. This happens from time to time.

The other point I would like to take up is the department's point of saying—and they keep saying it—that five per cent would be a huge move forward. Might I say to you that five per cent is a hell of a lot of product, and five per cent of product that is not rightly hooked into the potable water supply is a recipe for a disaster. I would strongly urge you to look again at your figures because WaterMark is there to do nothing more than to ensure the product is safe for the consumer, safe for the government infrastructure and safe for what it carries. None of us need a system where water gets polluted—for whatever reason—because it is scarce enough. I suggest to you that looking at the composition of materials and all the things that go with it that five per cent should not be discarded as a small amount. I think when you look at the overall marketplace it is a hell of a lot of product.

Mr ENTSCH—I have had a fair bit to do with the furnishing industry. They are faced with exactly the same problem that they are forced, in Australia, to build to standards in relation to bedding and lounges and a whole range of other things. They are compelled to comply to be able to sell that product on the Australian market. Yet there are container loads of stuff coming in here—products that are built for much smaller bodies and things that can damage kids. It is a health issue as well as putting a lot of Australian companies out of business because they are forced to spend the money to comply—and I suspect this is exactly the same in the plumbing industry—to meet this standard because they cannot manufacture their product without it. Yet you have other products that are allowed to basically come in here carte blanche. There is a high risk of injury to people by using this product and also a very high risk of damage to Australian businesses because of the inferior product. Is that a fair comment?

Mr Kefford—What was said earlier by Mr Fogarty about electrical safety and plumbing safety was that there is a pretty simple rule of thumb: if there is an electrical fault, it is an instant death; if it is a plumbing fault, who knows for 10 years that you have been drinking lead water or something or other which is going to make you pretty crook at the end of the day?

Mr Grey—I would like to clarify the interpretation of the five per cent. Without wanting to diminish the importance of this issue, I would like to clarify that what we are saying is that five per cent of WELS products may not meet the WaterMark criteria. We are not talking about five per cent of product on the market. It is a distinction. We are in fact talking about a much smaller percentage of product on the market, the reason being that the WELS products themselves are only a small subset of the product on the market. So we could only in fact be talking about one or two per cent of plumbing products.

Mr Naylor—The concern that we have is from the contractors' perspective in relation to dealing with their client and the fact that they are asked to install non-approved product which

may be WELS labelled. There is also the issue of the range of where product now comes from. I took the opportunity last night to have a look at eBay on the internet. There are 4,000-odd products listed there in the bathroom area. There are somewhere in the order of 400 tap ware products. When I went through those tap ware products, I could find none that actually quoted the fact that they were WaterMarked and met Australian standards, but some did say that they were WELS marked. A lot of those products were of overseas origin, specifically from Hong Kong. So there is a range of products that the market, being the consumer, can buy which do not go anywhere near any sort of process for standardisation of the quality of that product and the compliance of the product. That is where the major concern is, because that is a growing market.

We actually have to come to agreement and some realisation that the consumer buys basically on price. The discussion we are having is about regulation and is somewhat an argument about whether it should be federally regulated or state regulated. The issue for the consumer is that if they are not educated as to the need for compliance of that product, they have the largest investment that they will ever make, generally—a home—in which they can then install noncompliant product. If they go through the process of wanting to sell their home and somebody who does a very good due diligence as far as a building inspection then picks up the fact that some of this product that is installed does not meet requirements, they may not get the required certificate from local government to actually sell the house. That is where the problem becomes even more complicated.

At the point of sale, they are buying something at a price level which they believe is a good product because it may have a WELS label on it. It may not be certified as fit for purpose, but they install it or they find someone to install it, and it can then become a problem to them later on. This is also very much an issue about consumer education about the requirement to only use certified products that are fit for purpose. That really comes back to what Stuart said. With the issue of the equine flu epidemic at the moment and the issue of SARS, both Stuart and I have had the benefit of seeing a lot of submissions that have been made to the World Health Organisation. There is now representation on the World Health Organisation from the WPC, the World Plumbing Council, because the World Health Organisation is now acknowledging that a lot of the transmission of disease through poor quality water and poor quality sanitation is very much to do with product that is installed in the plumbing area.

With respect to what they are talking about in the legalistic sense, for the department to say that, government has to face the fact that at some point in time—as it is facing now with the equine flu outbreak—the people at the end of the chain, those affected by government regulation, will react if they see that the government is being deficient in not protecting them against the process which may come from poor quality legislation and regulation. That really is the key issue here. It is about consumers being very confident that what is put to them by government as a regulatory process will actually protect their interests in the long term. If it does not do that, they will react and want to come back and attack government, as the horse industry is doing at the present time, for a failure of regulation. There is talk of there only being five per cent. There may only be five per cent that are not WaterMarked but are WELS regulated, but that is going to grow for the simple reason that the use of the internet is growing every day. The 4,000 products that were on there last night will be 6,000 products in a couple of months time. It will grow and grow.

There is then the issue that we have all raised of that product that comes into the country illegally—I will put it that way—and is sold through outlets, whether it be auction houses or other internet sites, that people will buy because they perceive its value at a price. If for some reason it has a WELS label certification on it but is not WaterMarked, they will look for a process to go around that methodology of needing a qualified licensed plumber to install it. When that occurs, we all have a breakdown in the system, because any breakdown that it has caused that can get back into the potable water supply affects the whole community, not just the place where it is installed.

Mr BROADBENT—I am going to ask this question of you all in a minute: where do we go from here and how will this regulation affect the prices of the products? Craig, as a 20-year-old with a wife and three kids and a renovation to do—electricity, plumbing, carpentry, the whole lot—and nearly electrocuting my five-year-old daughter through the experience, I often think that on those lifestyle programs that are on every night on renovations, what you can do with your own backyard and those sorts of things there should be some emphasis, without regulation, for those people to say, ‘You never touch your electrical work; you never touch your plumbing; be careful with any furniture or whatever you might be doing,’ because these are crucial issues that I really do not think are out there enough.

Mr Simmons—That is correct. Every second Saturday our local ABC radio has a handyman on who takes calls. For my part, I have taken that opportunity with the local ABC to actually go on air and have a talk about these issues. In fact, the last session I did with them was on grey water diversion and the uses of grey water, because, particularly now as we are coming into summer, people start to use that water and it becomes quite problematic. But I have spoken about building and what type of building work not to do. Hopefully I will get a chance to go on and talk about electrical work as well. It tends to be that the overwhelming majority of people get the issue about electricity—they are slightly wary of it—but when it comes to plumbing and building they tend to think: ‘I might just get wet. If it really does go pear-shaped then I can always call the plumber.’

It is a huge problem for me as the local regulator in the ACT. As I say to all my fellow regulators across all the industries in the construction industry, I have got the easiest job because I have got the smallest jurisdiction to deal with, and it is a problem here. It is a huge issue about getting in front of those people. We try to work with the people at Bunnings and places like that that sell product. We have had a significant campaign over asbestos in the ACT. There was an asbestos task force. We have done a lot of work in getting that into the mind of home renovators. People’s casual interactions with asbestos now are far more frequent, because people think, ‘Well, it looks pretty easy on TV, so I might give it a crack,’ and we find them doing that sort of stuff. They are very expensive campaigns to run, but it is something we have to keep in the minds of people.

I go out and talk to all the first-year apprentices across all the licensed occupations each year now to make sure that they are aware from the start about the sorts of things that they should be doing. We are really looking to find ways to maximise the opportunities that we can get to inform people about what they are doing and the needs—that it is not always as easy as it looks. It is a very difficult task for a regulator.

I am both the licensing and the regulatory authority, so I see the issues in electrical product. I have seen the number of products and things that we have found, all the way up to product coming in which is stamped and has all the appearances of being Australian standard compliant, whereby it is not until it is tested that we have found it is not compliant. We have had significant issues with structural steel bolts in the construction industry. A whole suite of product came in which looked like it was Australian standard compliant but failed, and spectacularly so in a number of places. Those issues are across the entire construction industry and all products: the sheer mass of product coming in and what we can do about it to inform consumers. But we have realised that it does not take too much to realise that, as regulators, our job is not just with our industry but also with the consumers to try and inform them.

Mr ENTSCHE—The other problem of course is to try and get a plumber in a timely manner. They are scarce as hell at times. That skill shortage encourages people to do it too.

Mr Simmons—Yes. When I say I went out and saw the apprentices, we have got 100 first-year apprentices this year in this jurisdiction. We have got facilities that we are very pleased and proud to have here to train apprentices up. We are very keen to support that and to support the industry in assisting as many people into training as we can. We certainly do not have a lack of demand of people wanting to be in the trades.

CHAIR—As a committee, we will need to take some recommendations for change to the minister. Change is absolutely vital—we can see that. So in a 60-second grab—and you can pass if you want to; you do not have to do this—what would you tell us to take to the minister?

Ms Coate—I know the DEH has got advice about the changes they need. We have proposed three simple changes in their current act which would deliver the outcome of WaterMark as a prerequisite for WELS. We believe that is essential. We believe that there should be a national plumbing codes board with industry involvement in its set-up, application and enforcement. The states need appropriate tools as well as the WELS regulator. They must work on a complementary basis. We believe this will be achieved through a national plumbing codes board. Standards Australia, the NPRF and WaterMark must also work with industry to ensure that it finds an appropriate home. Again, I believe its home should be with the national plumbing codes board regulator. If those are the recommendations coming out from this committee, you will have done your work extremely well.

Mr Flynn—I believe what we need to address is the availability of this product. Non-complying product should not be readily available, because we know that if it is available, people will buy and install it. Also, as someone involved in manufacturing products in Australia and around the world, I think the cheapest form of materials will be the ones that contain lead, that will corrode, that will promote the growth of bacterial growth, and all these issues which are dealt with under the Australian standards. That needs to be reinforced and imposed through the WaterMark scheme. On the issue of cost, looking casually through Bunnings on a Sunday afternoon, I see a massive gap between what the product is sold for versus what it costs to make. So I do not necessarily believe that it is going to impact on the costs of a mum and dad and two kids. It might impact on someone's margin in the middle, but that slight increase in cost at the beginning will be more than justified in the improvement in safety along the way.

Mr Fisher—I would like to make a comment on risk and how we move forward. The original standards mark was derived for a range of plumbing products based on risk assessment. The risk assessment covered areas of health—that is, materials in contact with drinking water. It covered structural integrity—such as in bursting pipes or bursting fittings where we could experience significant commercial losses. They are all elements that need to be controlled. I concur wholeheartedly with what Carmel and Peter have said. We think a national approach is something that should be looked at.

I will throw in another area that we would like to raise. Various state health departments also have significant involvement in the control of plumbing product. Albeit they say they are not regulators, they get involved and that causes significant levels of concern. New South Wales Health is probably the department that causes some of the greatest concerns. There is a level of segmentation and the inconsistency. It needs to be driven by a central body.

Mr Fogarty—I will give an example. The federal government brought in an ozone depleting gas act, which meant that you had to declare to Customs if you were bringing in product that had refrigerant gases in it. There was an energy labelling scheme which was mandatory for all air conditioners. The government thought that they were handling that pretty well. Customs found that only half the product coming into the country was being energy labelled. So that shows that once it is in the country it will disappear. It will not necessarily go through Bunnings or those major outlets. I suggest that it be mandatory when you bring it into the country, to declare on the customs documents that it is a plumbing product. Then there would be a database and governments—state, federal or whatever—would have access to that database. If I was bringing in taps Customs would say to me, ‘Are they compliant? Have you got watermark?’ In other words, there would be some way of following it up and some way of controlling it. That is what I would ask for—that you look at something like that to stop it getting into the country.

CHAIR—Customs is a federal province.

Mr Fogarty—Yes, but whoever uses it might actually pass that information on. That is the only way you can stop it. Once it is in the country, plumbers will not necessarily install them and if they go through the normal retailers it is not going to happen.

CHAIR—Absolutely.

Mr Enright—Standards Australia has developed a number of standards that cover the water and plumbing area. These standards have been produced by a group of experts from industry, academia, consumers and regulators. These standards will protect the consumers. I would agree with everybody here that the real issue is how to impose those standards upon manufacturers and importers. That is the issue that needs to be resolved today.

Mr Blair—One of the other points is the administration of the watermark. I do not believe it is appropriate that Standards Australia should continue that role. One of the things we need to look to is the orderly and proper transfer of the management of the watermark scheme going forward.

Mr Simmons—The view of the National Plumbing Regulators Forum is simple: whatever process we come up with, we should have product which is safe and fit for purpose, first. Its efficiency is a second order issue. Safety is always our key criteria. The schemes that are put in place should make it very clear to the consumers, to the installers and to the end users that any product that carries a mark from any government in Australia is capable of meeting all the safety criteria as well as any efficiency criteria.

Mr Abercromby—I just reiterate that I think it is important that the watermark is a prerequisite for WELS. I think the whole thing needs to be combined. If it is not, the doubt still exists within the consumer.

Mr Naylor—We believe this is an issue of absolute protection of public health. We have raised that earlier. We have a position that we believe that there should be a national regulatory body and that that should be supported by national uniform regulation imposed on the states. The reason for that is the states' regulation is not consistently uniform at the present time. The final point is that the whole process must be supported by a very large campaign of consumer education and awareness. That is to the very point of compliance. There is a need for the consumer to understand what fit for purpose is and that they gain an understanding that they should only be product that is fit for purpose notwithstanding whatever it has been graded as for its use.

CHAIR—Which state would be the benchmark?

Mr Naylor—This could be a long discussion. I would answer that by saying that there are only, as I understand it, three states which have signed up to the Plumbing Code of Australia. I think that is partly where our first problem is. For the other states to come on board and sign up to the code would go some way towards it. You would start with the philosophical view that those three states have actually attempted to embrace a national philosophy rather than a states' rights type philosophy. The other states that have not adopted the national plumbing code come down more to their administrative model of regulation rather than the philosophy of regulation.

Mr Kefford—Already you have identified changes needed, and I think that that is right given the confusion and misleading of the public that I think is going on now. You are asking me what recommendations I would like to see. I would like to see WaterMark as a prerequisite for WEL—and I have said that before. I would like to see a new body similar to the ABCB to allow Standards Australia to have somewhere to orderly transfer the WaterMark² which is properly resourced and managed, and I would like to see a public education campaign. If that means that the act needs to be amended or the regulations need to be amended to protect the minister, so be it.

Mr Henry—I will initially just compliment you and the committee on the conduct of this inquiry. The terms of reference have covered the issue and have provided a great opportunity to canvass those issues. To summarise from my perspective from what has been said around the table, I would suggest that the establishment of an Australian plumbing codes board would pick up the responsibility of WaterMark, would help the development and application of the Australian plumbing code. Obviously this would need to be done in cooperation with the states, but I believe it would be very cost-effective and ultimately would not have any cost impact on the sale of plumbing product. There is no reason in my view why there should be any tensions between the regulations for public health and water efficiency. I find it a little frustrating that the

department comes in here and says they have legal advice that certain things are very difficult to achieve. My view is that we, as government and departments supporting governments and the community, should be looking at how we make things work for the benefit of the community.

I would also like to address the public health aspect. There has been a discussion of lead and the point about the importation of toys from China that have had lead. There is a lot of plumbing products that have copper, brass, PVC and plastic that potentially contain lead. When you look at the emergence of manufacturing countries like China and India and other places, the choice of a cheaper feed stock for the development of these products is obviously happening. What we need to do is ensure that there is a system of third party certification where these products that are imported are certified and accredited as complying with the Australian standards. I know that there are certifying agents that would be recognised by Australia being established in India, China, Europe and America to facilitate that process. So there would be no additional cost and that assessment and examination could be carried out as shipments leave for Australia.

Mr BROADBENT—Could that plumbing code be umbrellaed by the building code?

Mr Henry—I think there has been discussion about that in the past. Plumbing in many ways is much broader than building, and that is where you create a tension in the application of the two codes. Effective plumbing systems are essential to the built environment, but plumbing as an application in a large, broad service industry sector that goes beyond the building industry. You need to avoid those tensions, so I think the establishment of a separate board structured similarly to the Australian Building Codes Board would be the most effective way of avoiding those tensions.

Mr Grey—Hearing the discussion today I think there are three key themes that have come out. One is around the need to ensure public safety, and the second is around the uniformity of the state legislation that does that at the moment. The third is around the efficiency in the way that legislation is regulated.

I would like to make the point that these issues are currently the responsibility of the states and territories; they are not the responsibility of the Commonwealth. It is important to keep this in mind in looking at the way in which the WELS scheme was established. It was established effectively at the outset of the drought to look at ways in which we can reduce water wastage and improve the efficiency of products that use water. There have been a number of proposals suggested to look at broadening the scope of the legislation and the responsibility of the program. I just make the point that these fundamentally differ from the purpose of the program and the reasons for which it was established. In my mind there is a question about whether it is appropriate for the Commonwealth to actually be in this place, given that it is currently an issue that states are responsible for.

The solution that Mr Forbes outlined is a pragmatic solution to take forward. Informing our view is the intergovernmental agreement that was signed between the Commonwealth and states and territories, which requires that a majority of states and territories also agree to any amendments to the legislation. It is not just a Commonwealth decision. The solution that we propose does not require legislative change.

I mentioned earlier that the five per cent we have been talking about is not five per cent of plumbing product; it is just five per cent of WELS product, which is a much smaller number. I would like to further clarify that we are actually talking about taps—mainly taps and showerheads. The WELS scheme at the moment focuses on the devices at the end of the water supply system. So it is not the piping and the couplings; it is simply what is at the end. So it is the toilet, urinal, tap and showerhead. In terms of the products that we are referring to, the five per cent that would not be captured, is mainly taps and shower heads; it is not the other plumbing product which is further along in the supply chain.

Mr Abercromby—With respect, I think it is as important whether it is the urinal, WC, or tap. From a contractor's point of view there is some misunderstanding about where cross-connection can occur. Cross-connection, which is the waste water being connected back through the potable water, can happen at the showerhead, the WC or the urinal if it is installed incorrectly or if it is an inadequate product. So we have to be very clear that, even though it is a WELS product, what you are talking about is only shower heads or the end piece of equipment. It is crucial that it matches the Australian standard and is watermarked.

Mr Forbes—I will make just a couple of comments, if I may, Chair. One of the issues has been the point of sale question. People see WELS, because it is a point of sale issue, as actually being a solution. Point of sale is clearly a significant question in terms of plumbing regulation because, currently, point of sale is not the intersection where state regulations come in. It existed before 2005, before WELS came in. It is an issue which plumbing regulators have had to deal with for a long time. It is not just a plumbing regulating issue. We have had examples put by Mr Simmons today which relate to the building code. So this is a significant question, not just for the plumbing code; it is a significant question for the building code overall.

Moving forward to the point of sale question requires very careful consideration because there are issues in regard to whether the states and the territories have the ability to deal with it at the point of sale. Certainly the Commonwealth, through its cooperative arrangements with the states under the WELS scheme, allows that to happen because the Commonwealth is using its corporations power to intersect with the point of sale.

But we believe that the most appropriate place for regulation of plumbing is actually with states and territories rather than with the Commonwealth. That function really does sit with the states and territories. So the dilemma is: how do you actually deal with that? We have offered a solution which we think allows the two regulatory models to intersect in a way which provides a longer-term solution without necessarily having to change the legislation.

I would also like to point out one thing which was a sleeper here, and that is trade. The issues of trade are significant questions and have to be dealt with, because there is a whole range of free-trade agreements and arrangements. This department is not responsible for trade arrangements, but the committee would certainly need to be very careful in the way it considered issues and the impacts on the trade policy question. So you would need to be careful of those issues.

In terms of the issues of education, consumer education is clearly a critical factor here. We have labels in the marketplace which create a differential, which is the reason why we are sitting around this table. So consumer education is a very significant factor which I think has to be

addressed, and the resources needed to address it will not be small. We understand, and certainly my experience in other areas of the Commonwealth has been, that these things cost a lot of dough. It is not the sort of thing you do with a sixpence; it costs you a lot. So, to do consumer education effectively, significant resources have to be assigned to it. That is one of the tools to use to try and make sure that the differentials between the two regulatory models intersect appropriately and that consumers actually understand what they are buying and what can be installed.

CHAIR—To comment on that: we had a good submission from Minister Truss's office regarding trade and the implications of that. So thank you for reminding us, but we had a good submission. Ken, or Russell, do you have something further to add or contribute? You indicate you do not. We will then close this discussion, because I think we have done very well and I think we have some very good ideas to work on and hand to the minister. But before this roundtable discussion adjourns, I call upon one of the committee members to move that this committee authorises the publication of the transcript of proceedings given before it this day.

Mr BROADBENT—I so move.

CHAIR—Thanks to you all.

Committee adjourned at 11.58 am