



Submission to the Senate Standing Committee on Environment and Communications Inquiry into the *Water Efficiency Labelling and Standards (Registration Fees) Bill 2013* and *Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013*

Background

The Water Efficiency Labelling and Standards (WELS) scheme was established in 2005. It provides for the registration and water efficiency labelling of products for the purpose of supply. The basic intention of the scheme is to encourage the purchase of more water efficient products and provide for more efficient use of water. The scheme is also able to set minimum water efficiency standards. Products covered by the scheme include washing machines, dishwashers, showers, toilets, urinals, flow controllers and taps.

The scheme is supported by the Commonwealth's *Water Efficiency Labelling and Standards Act 2005* and corresponding state and territory legislation. At its inception the scheme was intended to recover 80 per cent of its costs from registration fees, with 10 per cent contributed by the Commonwealth, and the remaining 10 per cent by the states and territories. In practice the scheme has not reached 80% cost recovery.

The scheme was independently reviewed in 2010, and was found to be good public policy. A number of recommendations were made by the reviewer for improvement to the scheme's governance, compliance and enforcement activities, administration and funding basis.

In November 2011, the COAG Standing Council on Environment and Water (SCEW) endorsed its response to the review, and approved a three-year strategic plan and budget for the scheme. SCEW directed that a fee structure be implemented that would recover 80 per cent of the scheme's operating costs, with governments contributing the remaining 20 per cent. The total budget for the scheme was set at \$1.85 million for 2012/13.

These Bills are part of the suite of legislation required to implement the Government response to the review of the WELS Scheme. The package began with the *WELS (Scheme Enhancements) Act 2012* and was considered by the House of Representatives Standing Committee on Climate Change, Environment and the Arts and by the Senate Committee for the Scrutiny of Bills.

Implementation of many of those SCEW decisions resulted in amendments to the *Water Efficiency Labelling and Standards Act 2005* which were made in 2012. These include:

- the introduction of civil penalty provisions as an alternative to the existing criminal provisions;
- the introduction of a broader range of responses which may be made to breaches, allowing selection of responses more proportionate to the breach and which are able to remedy the situation (rather than punish the supplier of WELS goods);
- the Commonwealth Minister, with the support of the states and territories, is able to determine more of the detail of the scheme e.g. the registration period of products;

- broadening the definition of ‘supply’ so that it provides a level playing field for all suppliers of WELS products; and
- removal of the need to publish registration decisions in the Gazette, providing for further time and cost savings to the scheme and registrants.

The scheme’s administrative and consultative arrangements have also been improved, for example through changes to the registration database which provide substantial time savings for WELS staff and applicants, particularly when making applications for registration renewal.

WELS has received positive feedback from stakeholders about these improvements and its approach to compliance and enforcement.

Rationale for the Bills

The purpose of the Bills is to provide the legal basis for the original cost recovery policy stated at the inception of the scheme and reaffirmed by COAG SCEW and underpin changes made in the *WELS (Scheme Enhancements) Act 2012*.

The registration fees for the WELS scheme are in the form of a fee for service. A fee for service may take into account the costs of registration related activities, but may not take into account other essential activities such as standard setting, compliance monitoring, enforcement and communications.

The current fees were set in January 2013 as part of the transition to new arrangements with the aim of recovering 50 per cent of the scheme’s costs. Registration activity is expected to vary over time and so the level of cost recovery that could be achieved on the basis of a fee for service would also be variable.

This means that the WELS scheme is unable to deliver the 80 per cent cost recovery level set at the scheme’s inception in 2005 and reaffirmed by SCEW in 2011. Implementation of this level of cost recovery would require the fees to be in the form of a cost recovery tax rather than a fee for service.

The *Water Efficiency Labelling and Standards (Registration Fees) Bill 2013* is a cost recovery taxing statute which enables the Commonwealth Minister to set fees which take into account all of the costs of the scheme. The proportion to be recovered would be set by the Minister in consultation with the states and territories and the currently agreed level is 80 per cent.

The *Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill 2013* makes the necessary consequential amendments to the *Water Efficiency Labelling and Standards Act 2005* to allow the WELS Regulator to appropriately collect and administer the fees.

The Bills are intended to ensure the scheme’s long term viability. It will enable SCEW to continue setting future priorities and cost recovery targets for the scheme without having to draw distinctions between fee for service and taxable cost elements.

Consultation

The department has undertaken a substantial program of consultations as part of the review process and subsequently to consult on implementation options. For example in response to a January discussion paper released by the Department in early 2012, 119 submissions were received from manufacturers, retailers, industry and consumer groups. Forums were also held in Melbourne, Sydney and Brisbane.

During these consultations stakeholders were informed of the governments' intention to achieve 80 per cent cost recovery. After taking into account feedback on a range of proposed fee structures the current tiered fee system was selected and stakeholders were advised of the approximate amount of the fees that would be necessary to recover 80 per cent of scheme costs.

These Bills are technical in nature, and aim implement part of the suite of legislation needed to implement changes to the scheme for which consultation has already taken place.

In accordance with the WELS Intergovernmental agreement the Bills have been developed in consultation with the states and territories as well as relevant Commonwealth Departments.

Submissions made by other parties

The Department notes that the Senate Committee has already received submissions from other parties on this matter, and that some have expressed direct support for the Bills. Some of the submissions, however, have raised matters about the WELS scheme, or other schemes, which do not relate to the purpose of the WELS Bills.

Some of the issues raised in the submissions were addressed by the Independent Review in 2010 and the associated SCEW response. A copy of the recommendations and governments' response is provided for information at Attachment A.

One other matter raised in submissions is the appropriateness of the technical standards for the scheme. Technical standards for the WELS scheme are developed through Standards Australia using Standards Australia's normal processes for standards development. Standards are developed by a committee made up of representatives of a wide variety of industry and other stakeholders and a draft is opened for public comment. A standard is only finalised after public comment by consensus of the committee.

Joint Final Response of the Australian Government, States and Territories to the 2010 Independent Review of the Water Efficiency Labelling and Standards (WELS) Scheme

1. Governance

Recommendation 1.1

(i) WELSAC develop and agree to a three-year strategic plan and budget for approval by the Ministerial Council. The strategic plan would set out the priority activities for WELS. It would seek Ministerial Council approval of delegated decision-making authority to WELSAC in relation to specified matters in the plan; and
(ii) WELSAC provide annual reports to the Ministerial Council on outcomes against the three-year plan, including recommendations for any revisions to the plan.

Agreed. The 2012-15 WELS strategic plan, developed by the WELS Officials Group (WELSOG - formerly WELSAC) was considered by the Standing Council on Environment and Water at its 30 November 2011 meeting. Standing Council agreed that the 2012-15 WELS strategic plan be implemented from 1 July 2012 to guide the scheme's operation to 2015 and that annual reports be provided for standing council on outcomes against the strategic plan.

Recommendation 1.2

Governments review their representation on WELSAC to ensure representatives have the delegated authority required for the new WELSAC responsibility of developing and managing the three-year strategic plan.

Agreed in principle, noting that standing council arrangements provide for WELS advice to be considered through the Water Thematic Oversight Group and the Environment and Water Senior Officials Committee.

Recommendation 1.3

WELSAC be renamed the WELS Officials Group to reflect its new responsibility for the three-year strategic plan and budget.

Agreed. WELSAC was renamed the WELS Officials Group at its meeting on 3 February 2011 in Melbourne.

Recommendation 1.4

A representative of the WaterMark certification body be appointed as an observer member of WELSAC (if the WELS plumbing responsibilities are transferred to the WaterMark certification body – see Recommendation 4.2).

Not Applicable. WELS plumbing responsibilities will remain the responsibility of the WELS Regulator, currently based in the Department of Sustainability, Environment, Water, Population and Communities (see response to Recommendation 4.2).

Recommendation 1.5

(i) A WELS Advisory Group of stakeholders be established to advise WELSAC and the Ministerial Council.

The Advisory Group would:

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

Agreed. The WELS Advisory Group has been established and held formed with the its first of three 2011 meetings on 28 June 2011 in Adelaide. The group comprises ten members and is chaired by a stakeholder member. Members were invited by the Parliamentary Secretary for Sustainability and Urban Water, Senator the Hon Don Farrell, after consultation with states and territories. The chair of WELSAG attends part of meetings of the WELS Officials Group to present WELSAG's views on matters including the draft three-year strategic plan.

2. Objects of Act

Recommendation 2.1

No changes be made to the objects of the Act.

Agreed.

3. WELS Standards

Recommendation 3.1

The Standards Australia process be retained for setting WELS Standards.

Agreed.

Recommendation 3.2

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

Agreed in principle. As stated in the joint initial response to the independent review, the provision of increased resources and funding to the Standards Australia process will continue to be dependent upon the issues under consideration.

Recommendation 3.3

A clause be added to the Act:

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

Noted. Legislative amendments are anticipated to be considered in 2012, following a stakeholder consultation process, to clarify clauses in the *WELS Act 2005* relating to the sale of remaining stock following a change to WELS product standards.

4. The Regulator – WELS Administration

Recommendation 4.1

The WELS administration be merged with the E₃ administration, and have responsibility for all WELS policy matters and the administration of WELS white goods to yield economies and synergies, particularly in relation to registration and compliance, investigating new products and standards, and communications and training programs.

Not agreed. Responsibility for WELS policy matters and the administration of WELS whitegoods will remain the responsibility of the WELS Regulator, currently based in the Department of Sustainability, Environment, Water, Population and Communities. Consistent with the 2012-15 WELS strategic plan, this matter will be further explored, potentially in 2014-15, once other elements of the strategic plan have been progressed.

Recommendation 4.2

WELS' registration, compliance and communications functions for plumbing products be transferred to the body responsible for WaterMark certification.

Not agreed. WELS' registration, compliance and communications functions for plumbing products will remain the responsibility of the WELS Regulator, currently based in the Department of Sustainability, Environment, Water, Population and Communities. Consistent with the 2012-15 WELS strategic plan, further consideration of an alignment of WELS plumbing responsibilities and the WaterMark certification scheme is expected to be undertaken in the context of a possible review of the WaterMark certification scheme in 2012.

5. Registration

Recommendation 5.1

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

Not agreed. Pending further consideration including further stakeholder consultation, the family of models provision is expected to be removed under proposed new registrations arrangements.

Recommendation 5.2

New registration to be required for each re-branded model.

Agreed. This is expected to be a requirement under proposed new registration arrangements.

Recommendation 5.3

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

Agreed. Amendments to the *WELS Act 2005* are anticipated to be considered in 2012 to remove the requirement for Gazettal to give effect to a new registration, and to instead enable the Commonwealth Minister to 'determine' where information on WELS Registrations will be published. This would enable the Minister to 'determine' the WELS Public Search Database as the source for information on WELS Registrations.

Recommendation 5.4

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

Noted. New registration arrangements proposed to be introduced in 2012 will consider the most appropriate way to maintain accurate information on the registration status of WELS products. The proposed new arrangements do not propose removing the need to renew expiring registrations, however they are expected to shorten the period of registration from the current five years.

Recommendation 5.5

The provision for voluntary registration be removed from the Act.

Agreed. Legislative amendments are anticipated to be considered during 2012 proposing that the provision for voluntary registration be removed from the *WELS Act 2005*. Flow controllers are currently the only WELS product that can be voluntarily registered. Following a stakeholder consultation process, consideration will be given in 2012 as to whether flow controllers be made a WELS product requiring mandatory registration and labelling, or whether they be removed from the scheme.

6. Labelling

Recommendation 6.1

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

Noted. As part of the process of introducing new registration arrangements in 2012, consideration will be given as to how best to ensure that information on WELS labels can be matched against registration information in a cost-effective way for stakeholders.

7. Compliance

Recommendation 7.1

Offences be established as both civil and criminal penalty provisions.

Agreed in principle. Pending the outcomes of further legal advice and stakeholder consultation, legislative amendments are anticipated to be considered in 2012 proposing the introduction of civil penalty provisions as well as a revision of the existing criminal offences under the *WELS Act 2005*.

Recommendation 7.2

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

Agreed in principle. Appropriate new civil sanctions will be considered in conjunction with the proposed introduction of civil penalty provisions into the *WELS Act 2005*.

Recommendation 7.3

The following offences be established:

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

Not agreed. The Department of Sustainability, Environment, Water, Population and Communities is seeking legal advice on possible changes to the existing offence provisions in the *WELS Act 2005*. Any proposed improvements to the legislation would require consideration by the Parliament. The notion that different offences could apply to different parts of the supply chains for WELS products is not agreed due to the complexity of the supply chains.

Recommendation 7.4

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

Agreed. A cooperation agreement is currently being negotiated by the Department of Sustainability, Environment, Water, Population and Communities with the ACCC and is expected to be finalised in December 2011.

Recommendation 7.5

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

7.5(i) – Agreed.

7.5 (ii) – Not applicable (see response to recommendation 4.2). Governments note that check testing of plumbing products is currently undertaken for the WELS scheme and will remain a priority during 2012-15.

Recommendation 7.6

Advertising not be required to display WELS information.

Not agreed. The requirement to display WELS information in product advertising can be a cost effective way to aid WELS brand recognition and is of increasing importance in an age of e-retailing. Pending further stakeholder consultation, governments propose confirming the requirement to display WELS information in product advertising, and the WELS Regulator will increase compliance activities concerning this requirement.

Recommendation 8.1

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

Agreed in principle. Communication activities, including planned new activities, will continue to be based on the principles of efficiency and effectiveness and will be informed by sources including advice from the WELS Advisory Group.

9. Product expansion and setting new Minimum Water Efficiency Standards

Recommendation 9.1

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

Agreed. This is to be considered under the 2012-15 WELS strategic plan.

10. Cost Recovery

Recommendation 10.1

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

Not agreed. Proposed new funding arrangements, including improved cost recovery, are to be implemented to ensure the ongoing sustainability of the scheme.

11. Trans-Tasman Mutual Recognition Arrangement

Recommendation 11.1

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

Agreed. The Department of Sustainability, Environment, Water, Population and Communities is seeking cost effective ways to improve communication and information sharing with the New Zealand WELS scheme.

12. Relation to Other schemes

Recommendation 12.1

A single web portal be established to provide information about WELS, WaterMark and Smart-Approved WaterMark, which provides a link to the home pages for each of the three programs and links between their home pages.

Not agreed. However, the WELS website is currently being restructured and the improved site will include appropriate links and information for users to navigate to the WaterMark and Smart-Approved WaterMark websites.

Recommendation 12.2

WELS and Smart-Approved WaterMark agree to a Memorandum of Understanding to promote co-operation and complementary roles.

Not agreed. Governments do not believe that a Memorandum of Understanding between the WELS scheme and Smart-Approved WaterMark is necessary to promote co-operation and complementary roles.