

The greatest loss of water in Australia is well recognized as a dripping tap. – *Doust Plumbing Products*<sup>1</sup>

## Regulating plumbing product quality

- 2.1 The Water Services Association of Australia (WSAA) aptly points out that the regulatory arrangements for controlling plumbing product quality reflect the level of risk governments are prepared to take with drinking water supplies and sewerage collection; namely, public health and environmental risks.<sup>2</sup> Add to this the continuing drought in Australia and associated water scarcity, and the need for reliable and water efficient plumbing products becomes paramount.
- 2.2 Despite the critical function of plumbing products, evidence to the Committee overwhelming indicated that more work is needed to improve the cohesion, consistency, understanding and enforcement of current plumbing product regulatory arrangements.
- 2.3 The Committee agreed with the Plumbing Industry Commission's assessment that:

In the long run it makes sense to take a holistic view of product quality, one that does not separate public policy and consumer concerns with water conservation or energy saving from other aspects of product performance such as safety or longevity.<sup>3</sup>

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1 Doust Plumbing Products, Submission 1, p. 2.

2 Water Services Association of Australia, Submission 10, p. 3.

3 Plumbing Industry Commission, Victoria, Submission 18, p. 8.

## Environmental benefits of regulating plumbing product quality

2.4 According to the Master Plumbers and Mechanical Services Association of Australia (MPMSAA), over 70 per cent of water and energy savings that can be achieved in buildings are related to plumbing installations.<sup>4</sup>

2.5 The Committee is of the view that this reinforces the need for effective management of plumbing product quality in Australia. It strongly believes that controlling plumbing product quality can lead to significant environmental gains, including water conservation and safeguarding against contamination of water resources. This makes an inquiry into the regulation of plumbing product quality in Australia an important and germane one for this Committee.

2.6 Generally, work has not been undertaken to quantify environmental and public benefits from controlling plumbing product quality. It is an even more difficult task to attempt to calculate the risk of *not* controlling the quality of plumbing products.<sup>5</sup>

2.7 Caroma Dorf observed that:

Environmental benefits provided to the community through the controlling of plumbing product quality is best demonstrated by referring to the impact of mandating dual-flush 6/3 litre toilets in Australia in 1993...the amount of water being used in the year 2020 for toilet flushing was anticipated to be less than the amount being used in 1991. This result [could be] achieved even with a projected population increase to 26,707,000.<sup>6</sup>

2.8 The Committee noted comments from Standards Australia that:

Tangible environmental benefits for products certified under the WaterMark scheme are that they're continually assessed for inclusion in the scheme with the aim of saving energy, water and reducing pollution. The WELS scheme, on the other hand, encourages improved designs of existing products to reduce water consumption.<sup>7</sup>

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4 Master Plumbers and Mechanical Services Association of Australia, Submission 26, p. 3.

5 Water Services Association of Austral, Submission 10, p. 4 and Mr Michael Kefford, Submission 8, p. 4.

6 Caroma Dorf, Submission 11, p. 7.

7 Standards Australia, Submission 23, p. 5.

- 2.9 The Committee was disappointed, however, to learn that potential benefits are being diminished by anomalies between the WELS and WaterMark schemes. This issue will be examined in this report.

## Current regulatory arrangements

- 2.10 The current regulatory arrangements that govern the manufacture, sale and installation of plumbing products in Australia is a complicated nexus of government and other approved organisations which set and administer a mixture of mandatory and voluntary schemes.

There is an array of schemes and sources of advice on aspects of product performance. No one scheme is definitive on all the performance aspects of a particular plumbing product. No one scheme encompasses all kinds of plumbing product.<sup>8</sup>

- 2.11 Standards Australia's diagram of stakeholder groups (see Appendix C) effectively illustrates the numerous stakeholders (government and industry groups) that play a part in developing and assessing the standards governing plumbing product quality in Australia.<sup>9</sup>
- 2.12 Tables submitted by the Housing Industry Association (HIA) provide an excellent summary of the plumbing regulations (see Appendix D) and the water efficiency regulations (see Appendix E) effective in each state and territory.<sup>10</sup>
- 2.13 The Committee was disappointed to learn from the submissions it received that a number of key industry stakeholders consider the current regulatory arrangements as lacking coherence and consistency.
- 2.14 Comments ranged from the moderate to the more damning:
- Despite the good efforts of all parties concerned, current arrangements are not as effective as they could be... This adds complexity and scope for public and industry confusion to a complex and rapidly evolving plumbing environment.<sup>11</sup>

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8 Plumbing Industry Commission, Victoria, Submission 18, p. 8.

9 Appendix C is taken from Standards Australia, Submission 23, p. 10.

10 Appendices D and E are taken from Housing Industry Association, Submission 20, pp. 8-9 and 14.

11 Plumbing Industry Commission, Victoria, Submission 18, p. 8.

The operation of the current plumbing product quality regulations can be significantly improved to increase the consistency of application and outcomes expected of plumbing work.<sup>12</sup>

The present plumbing quality regulatory schemes in Australia suffer from a lack of coordination and consistency.<sup>13</sup>

...notwithstanding that efforts have been made over the past 20 years to establish a uniform process for regulating plumbing products, the current "system" is considered to be fragmented, excessively complex, not understood by regulators and the regulated.<sup>14</sup>

The regulation process is, prima facie, ineffective, not focused on regulators' interests and, for some products, an unreasonable impost on manufacturers and consumers.<sup>15</sup>

...you have the recipe for chaos.<sup>16</sup>

2.15 The Australian Electrical and Electronic Manufacturers' Association (AEEMA) called for:

...better co-ordination between the agencies currently involved in plumbing regulation – namely the Australian Building Codes Board, the Plumbing Code of Australia, Standards Australia and the WELS Scheme. The trend for agencies to develop their own regulations without full inter-agency co-ordination needs to be changed. The absence of co-ordination has led to anomalies in requirements for: installation; occupational health and safety; water and energy conservation; and quality & performance.<sup>17</sup>

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12 Housing Industry Association, Submission 20, p. 12.

13 Workplace Standards Tasmania, Submission 15, p. 4.

14 Water Services Association of Australia, Submission 11, p. 3.

15 Water Services Association of Australia, Submission 11, p. 3.

16 The Institute of Plumbing Australia, Submission 4, p. 1.

17 Australian Electrical and Electronic Manufacturers' Association, Submission 22, p. 3.

- 2.16 The Committee shared the Plastics Industry Pipe Association (PIPA) of Australia's concern that:

Without a genuinely complete regulatory process plumbing product quality will be compromised.<sup>18</sup>

### Committee Assessment

- 2.17 The Committee found current regulatory arrangements for managing plumbing product quality in Australia overly complicated and lacking cohesion. These were recurrent criticisms in the evidence received. It acknowledges that some government and a range of industry groups have been working hard to address issues that are hindering the operation of regulatory practices. However, the Committee believes there are a number of actions that the Australian Government can, and should, take to improve the way in which plumbing product quality is managed in Australia. The Committee expands on this in the relevant sections of this chapter.

## WELS and WaterMark

### Water Efficiency Labelling Standards

- 2.18 The Department stressed that the intent of the WELS scheme is only to provide labelling information about water efficiency of products and to establish minimum water efficiency standards.<sup>19</sup>
- 2.19 As the evidence reflected, the WELS Scheme has its supporters and critics. The Committee shared HIA's optimistic view that the WELS Schemes is an important first step towards a nationally consistent water product labelling scheme. However, it readily acknowledged the Scheme's "operational problems" and the challenges marking its relationship with the WMCS.<sup>20</sup>
- 2.20 A number of submissions were critical of the WELS scheme. The Institute of Plumbing Australia took the view that:

The WELS scheme that has eventuated has been watered down from those earlier concepts that we understand were signed off

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18 Plastics Industry Pipe Association of Australia Ltd, Submission 3, p. 3.

19 Department of the Environment and Water Resources, Transcript, 13 September 2007, Canberra, p. 2.

20 Housing Industry Association, Submission 20, p. 19.

with the manufacturing industry and now adds to the miss match of regulation across Australia.<sup>21</sup>

2.21 AEEMA argued that:

The WELS Scheme was intended to be a joint government and industry initiative. However the initial goodwill and co-operation has largely dissipated. The Scheme has become highly legalistic, bureaucratic and inefficient, with little apparent enforcement and many obvious examples of non-compliance. It is essential that we learn from the lessons of the WELS Scheme when addressing the issue of regulation of plumbing product quality in Australia.<sup>22</sup>

2.22 An element of concern is what the Institute of Plumbing Australia refers to as part of the “watering down process”, in which a product that does not meet the water efficiency requirements of WELS can still be sold with a “non-compliant” WELS label. The Institute felt that “...if this does not send the wrong message to the buying public nothing will”.<sup>23</sup>

PPI Group contends that the application of a WELS label to a non WaterMarked, non authorised product is undermining the delivery of a safe water supply to the Australian community.<sup>24</sup>

### Minimum water efficiency standards

2.23 The WSAA found the WELS Scheme to be:

...currently deficient in that it does not include minimum water consumption performance standards to underpin the Scheme and eliminate water inefficient products from the marketplace.<sup>25</sup>

2.24 Workplace Standards Tasmania proposed that greater “...environmental benefits can be achieved by setting minimum performance levels by regulation”.<sup>26</sup> The HIA believes there is “considerable scope” for this to be achieved through WELS, in conjunction with WMCS, by introducing minimum performance standards for major plumbing fixtures.<sup>27</sup>

2.25 Under the WELS Scheme a product can still obtain a WELS label, and therefore be legally sold, if it does not meet water efficiency or other basic performance standards. The product will be issued a “zero-rating” label

21 The Institute of Plumbing Australia, Submission 4, p. 2.

22 Australian Electrical and Electronic Manufacturers’ Association, Submission 22, p. 2.

23 The Institute of Plumbing Australia, Submission 4, p. 2.

24 Plumbing Products Industry Group, Submission 6, p. 8.

25 Water Services Association of Australia, Submission 10, p. 11.

26 Workplace Standards Tasmania, Submission 15, p. 3.

27 Housing Industry Association, Submission 20, p. 21.

clearly indicating that it does not comply with AS/NZ 6400.<sup>28</sup> This covers around 10 per cent of plumbing products registered under the WELS Scheme:

The zero rated category under WELS consists of products that have either failed a performance test for attributes that affect water efficiency or that have a flow rate that is higher than that required to gain a 1-star WELS rating.<sup>29</sup>

- 2.26 Admittedly, if the product is of very poor quality it is unlikely to obtain WaterMark certification and consequently cannot be legally installed in Australia.
- 2.27 While the Committee accepts that the zero-rated product label is a “water warning” rather than “water rating” label, it believes that the WELS scheme should be enhanced by the inclusion of minimum water efficiency standards for a range of products. It felt that the zero-rating label may satisfy the bureaucratic requirements but not the spirit of the scheme; the pursuit of water efficiency and sustainability.
- 2.28 The Committee noted advice from the Department that work had recently commenced on exploring options to introduce minimum water efficiency standards to products in addition to those currently in place for toilets.<sup>30</sup>

## Recommendation 1

- 2.29 **The Committee recommends that the Department of the Environment and Water Resources, in consultation with industry and the community, take immediate action to progress their investigation and to implement appropriate minimum water efficiency standards for all plumbing products under the WELS Scheme.**

28 See the Water Rating website at <http://www.waterrating.gov.au/products/registration.html>, accessed 4 September 2007.

29 Department of the Environment and Heritage, Transcript, 13 September 2007, Canberra, pp. 4-5.

30 Department of the Environment and Heritage, Submission 28, p. 2. Only toilets are currently covered by minimum water efficiency standards and therefore cannot obtain a zero-star label.

## WaterMark Certification

- 2.30 The WMCS operates primarily to safeguard public health and safety, but its objectives have been expanded to include environmental issues and sustainability.<sup>31</sup>
- 2.31 The NPRF and HIA expressed their support for the WaterMark Certification Scheme:
- The current system is entirely appropriate in its application and highly desirable in giving an effective national uniformity of quality.<sup>32</sup>
- HIA believes that effective national plumbing product quality standards and approval procedures are currently in place through the Watermark certification scheme.<sup>33</sup>
- 2.32 While the WMCS is currently administered by Standards Australia, it has indicated that "...administration of the WaterMark scheme is not compatible with [their] business structure and strategic goals".<sup>34</sup> SA is holding discussions with NPRF to explore options for a transfer of this responsibility to an appropriate group.<sup>35</sup>
- 2.33 The Committee saw this as an opportunity for the industry to examine the management of the scheme and stressed that it is important that the WMCS is administered in a national and unified fashion.
- 2.34 It also noted that the NPRF "...takes a close interest in the operations of the mechanisms of the Scheme and regularly discusses issues of concern with SA".<sup>36</sup>
- 2.35 Accordingly, a review is currently being undertaken by SA and the NPRF into the Plumbing Code of Australia and the WMCS, to examine "...the inconsistencies and inefficiencies that have been identified by the parties and industry, which need attention".<sup>37</sup>

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31 Workplace Standards Tasmania, Department of Justice, Submission 15, p. 2.

32 National Plumbing Associations Alliance, Submission 9, p. 3.

33 Housing Industry Association, Submission 20, p. 18.

34 Standards Australia, Submission 23, p. 9.

35 Standards Australia, Submission 23, p. 9.

36 National Plumbing Regulators Forum, Submission 21, p. 5.

37 Workplace Standards Tasmania, Submission 15, p. 4.



- 2.36 Issues identified in submissions include:
- ...responsibilities for compliance and efficiency, timeliness of the process, auditing of CABs, and complaints procedures.<sup>38</sup>; and
- The effectiveness of the WMCS has also been hindered by confusion over the independence of the Scheme from other product appraisal and approval schemes, in particular the Water Services Association of Australia's Smart Approved WaterMark for water supply and sewerage infrastructure products...<sup>39</sup>
- 2.37 The review aims to ensure the effective functioning of the WMCS and PCA arrangements; that they are meeting their public health and safety, conservation and environmental obligations.<sup>40</sup> The Committee looks forward to the outcome of this review.
- 2.38 The HIA recommended that the PCA be adopted by all states and territories and for state based variations to be removed or incorporated into the PCA by 2010. However, it asserted:
- ...if the PCA were to be instituted as a regulatory document that it should be the vehicle for promoting "best practice". This should remain within the realm of voluntary industry best practice guidance by government and be supported by all levels of government, but not mixed with regulatory intent.<sup>41</sup>
- 2.39 The HIA believes that:
- ...several changes would be required to ensure that the PCA meets existing Council of Australia Government (COAG) requirements for good regulation making.<sup>42</sup>

### The relationship between the schemes

- 2.40 While it is a credit to the WELS and WaterMark Certification Schemes that they both include performance criteria for the water efficiency of products, the Committee considered the separate operation of these two mandatory schemes to be one of key issues needing to be addressed.

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38 Workplace Standards Tasmania, Submission 15, p. 4.

39 National Plumbing Regulators Forum, Submission 21, p. 12.

40 National Plumbing Regulators Forum, Submission 21, pp. 8-9.

41 Housing Industry Association, Submission 20, p. 10.

42 Housing Industry Association, Submission 20, p. 10.

2.41 The NPRF have found that:

Research and discussion undertaken by members of the NPRF shows that there is a perception amongst industry and the public of the WELS and WaterMark certification schemes as being integrated, with WELS being a higher certification.<sup>43</sup>

2.42 However, the reality is that the two are separate systems; the WELS Scheme solely with a water efficiency focus, while the WaterMark is safety oriented, focusing on wider aspects of product quality, including water efficiency.

2.43 The Plumbing Products Industry Group claimed that industry support for the Australian Government's WELS initiative was provided on the basis that meeting the requirements for WaterMark Certification and the relevant Australian Standards would be a prerequisite for participation in the WELS Scheme.<sup>44</sup>

2.44 However, the Department of the Environment and Water Resources maintained that the WELS Scheme was explicitly developed *only* to provide labelling information about water efficiency and *not* other aspects of product quality. It called attention to the Regulation Impact Statement for the WELS Act, which stated:

It is generally not the intention of the proposed regulation to address any aspects of product quality or performance except those that impinge on the efficiency of water use, nor to generally enforce compliance with State and Territory plumbing codes.... Therefore those parts of the Australian standards which would require compliance with requirements not related to water efficiency will be explicitly excluded.<sup>45</sup>

2.45 The Committee noted that neither scheme has complete coverage, with the effect that some products go unassessed.<sup>46</sup> Caroma Dorf indicated that in the case of some sanitary fixtures, standards have been developed and published, but they have not been included under the WMCS.<sup>47</sup>

2.46 The anomalous situation exists in that a certified plumber may have to refuse to install a product with the WELS label if it is not also WaterMark certified. The Institute of Plumbing Australia suggests that:

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43 National Plumbing Regulators Forum, Submission 21, p. 11.

44 Plumbing Products Industry Group, Submission 6, p. 8.

45 Department of the Environment and Water Resources, Submission 28, p. 3.

46 Plumbing Industry Commission, Victoria, Submission 18, p. 3.

47 Coroma Dorf, Submission 11, p. 5.

This upsets the client who may then take illegal methods of installation but above all it brings what could be a major contributor to water conservation, the WELS scheme into disrepute.<sup>48</sup>

- 2.47 Standards Australia agreed that these anomalies "...mean that the effectiveness of both schemes are diminished".<sup>49</sup>
- 2.48 To address confusion and uncertainty, the Department amended the initial WELS Standard, effective from 15 February 2007.<sup>50</sup> Notwithstanding these amendments that reinforced the water efficiency focus to the exclusion of wider product quality, it is the view of the Committee that there is clear industry support for exploring and establishing closer links between the two schemes.
- 2.49 While the Committee noted that the WELS scheme was deliberately established to be independent of the PCA,<sup>51</sup> there are already logical linkages between the two schemes. As the Department itself acknowledged, WaterMark certification can be used by applicants for WELS registration to confirm that the product has been tested against the relevant water efficiency performance criteria.<sup>52</sup>
- 2.50 The Department advised that of the products registered under the WELS Scheme, about 85 per cent made reference to a WaterMark Certificate. The remaining 15 per cent did not refer to WaterMark, two-thirds of which the Department claimed would not meet WMCS requirements, and the likely quality of the remaining 5 per cent is unknown.<sup>53</sup>
- 2.51 While the NPRF views a single unified scheme as unnecessary, it does see merit in improving the linkages between the schemes.<sup>54</sup> However, the WSAA suggested that the two regulatory schemes could "...easily be rolled into a 'one-stop shop'".<sup>55</sup>

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48 The Institute of Plumbing Australia, Submission 4, p. 2.

49 Standards Australia, Submission 23, p. 5.

50 Department of the Environment and Water Resources, Submission 28, p. 3. The WELS Act was amended by the *Environment and Heritage Legislation Amendment (Antarctic Seals and Other Measures) Act 2006*. AS/NZS 6400:2005 *Water efficient products – Rating and labelling* was amended in December 2006.

51 Department of the Environment and Water Resources, Transcript, 13 September 2007, Canberra, p. 2.

52 Department of the Environment and Water Resources, Submission 28, p. 3.

53 Department of the Environment and Water Resources, Submission 28, p. 3.

54 National Plumbing Regulators Forum, Submission 21, p. 11.

55 Water Services Association of Australia, Submission 10, p. 11.

2.52 Mr Michael Kefford proposed:

...one immediate step which can be taken at no cost to the Commonwealth which would offer the industry and consumers a huge service, and at the same time give an immeasurable amount of support to the protection of Government infrastructure and our precious water supply, and that is to mandate the WaterMark as a prerequisite for a WELS rating.<sup>56</sup>

2.53 However, while the Department of the Environment and Water Resources recognised the need to address the confusion that exists, it felt that what seemed to be attractive as a pragmatic solution is actually fraught with complications because of the different regulatory models and the intersect between Commonwealth and State roles and responsibilities.<sup>57</sup>

2.54 The Department informed the Committee:

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 ...we do not think a prerequisite arrangement will work.<sup>58</sup>

2.55 In other words, because the WaterMark standards are set by Standards Australia (through its committees) and not the Minister or Australian Government, the Department is concerned that making WaterMark a prerequisite for WELS registration would be an inappropriate delegation of the powers under the WELS Act.

2.56 The Department proposed a more tempered measure to reduce the incidence of products being sold which were not fit for installation. It suggested that establishing minimum water efficiency standards for WELS registration would remove the zero-rated products that account for about 10 per cent of WELS registrations. It felt that this approach is consistent with and achievable under the current WELS Act.<sup>59</sup>

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56 Mr Michael Kefford, Submission 8, p. 5.

57 Department of the Environment and Water Resources, Submission 28, p. 5.

58 Department of the Environment and Water Resources, Transcript, 13 September 2007, Canberra, p. 6.

59 Department of the Environment and Water Resources, Submission 28, p. 6.

## Committee Assessment

2.57 The Committee concedes that a greater integration of the two schemes would require legislative change. However, it believes that such a course is not only desirable, but very necessary, to address industry and community confusion and frustration, to maintain industry and community confidence in the schemes and ensure the quality of the plumbing products in the Australian marketplace and homes. Consumers and industry could clearly benefit from a closer relationship between these two worthwhile and necessary schemes.

## Recommendation 2

2.58 **The Committee recommends that the Australian Government act to make the necessary legislative changes to establish WaterMark Certification as a prerequisite for compliance with the Water Efficiency Labelling Standards Scheme.**

## Accessing Australian Standards

2.59 One of the issues brought to the Committee's attention was the cost of acquiring the extensive range of Australian Standards that relate to the manufacture, sale and installation of plumbing products in Australia.<sup>60</sup>

2.60 It was pointed out to the Committee that:

...access to these standards should [be] far easier for those that are governed by them. Currently a plumber has to purchase the relevant AS publication that relates to the type of work that he/she is doing. This can be particularly expensive when a plumber wants to work in a number of fields of plumbing. The problem is exacerbated by the need to constantly upgrade and replace standards issues as they are changed or replaced.<sup>61</sup>

2.61 The Housing Industry Association argued that:

Australian Standards referenced in Commonwealth or State regulations be made freely available online to the plumbing and building industry.<sup>62</sup>

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60 Housing Industry Association, Submission 20, p. 17.

61 Mr John Baglin, Exhibit 1, p. 1.

62 Housing Industry Association, Submission 20, p. 17.

- 2.62 However, the Committee recognised that developing and administering these standards is not a cost-free exercise. It suggests that Standards Australia and other relevant peak bodies are better placed to consider this issue and, if deemed appropriate, make any needed changes to access arrangements.

### Point-of-sale requirements

- 2.63 Certain plumbing products sold are required, under the WELS Act, to have a WELS label attached at the point-of-sale. However, plumbing products without WaterMark Certification can be imported and sold in Australia, but they cannot legally be installed. The anomalous situation then exists in that a certified plumber may have to refuse to install a product with the WELS label if it is not also WaterMark certified.
- 2.64 As reflected in criticisms of the interaction of the WELS and WaterMark Certification Schemes, the purchase of plumbing products with the WELS label and the further requirement for a WaterMark for installation has been a source of confusion and frustration for customers, plumbers and the industry.<sup>63</sup>
- 2.65 The Plumbing Industry Commission felt that it was inappropriate to place the onus solely on consumers to interpret the various product labels or on plumbers to determine the products that they can legally install.<sup>64</sup> Nor is it appropriate to try and shift responsibility entirely to retailers without the appropriate regulatory backing and enforcement measures.
- 2.66 In its submission, Caroma Dorf called for the adoption of strong point-of-sale legislation. It claimed this would:
- ...significantly strengthen the WaterMark Scheme and overcome the reliance of the installing plumber to ensure that products are certified and stop non-certified plumbing products being supplied to the market.<sup>65</sup>
- 2.67 AEEMA went further to suggest that a customs requirement to declare a plumbing product being imported could also be instituted – similar to arrangements made for items with refrigerant gases and energy labelling – from which a database could be established to better track the entry of

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63 For example, see National Plumbing Associations Alliance, Submission 9, pp. 3-4.

64 Plumbing Industry Commission, Victoria, Submission 18, p. 8.

65 Caroma Dorf, Submission 11, p. 9.

plumbing products into Australia and to help control their compliance with WaterMark requirements.<sup>66</sup>

2.68 While the Committee supports stricter point-of-sale arrangements for plumbing products, it noted comments by MPMSAA that:

... further research is needed as to not adversely impact on the overall cost of products by having [an] over complicated or expensive scheme, which would be funded predominantly by industry/manufacturers.<sup>67</sup>

2.69 Similarly, the NPRF observed that point-of-sale regulation of plumbing products "...still requires thorough assessment of its necessity, viability and regulatory impacts, before action is taken".<sup>68</sup>

2.70 The Committee recognised that if steps are taken to significantly limit the plumbing products able to be sold in Australia, there could be trade implications. It further acknowledged comments from the Department of Foreign Affairs and Trade (DFAT) that a full analysis of the trade implications of a new regulatory scheme for plumbing products is not possible without a proposed regulatory framework to consider.<sup>69</sup>

2.71 The Committee also noted DFAT's advice that "...Australia's trade obligations will continue to apply, even if new measures relating to plumbing product quality are industry self-regulated".<sup>70</sup> For example, under the National Treatment principle:

Australia's essential obligation in this context is to ensure that "technical regulations" or "standards" as defined under the TBT [Technical Barriers to Trade] Agreement are not used to create unnecessary obstacles to international trade.<sup>71</sup>

2.72 In particular, the Committee noted and endorsed DFAT's comment that transparency would need to be an integral part of any proposed new measures or changes, including allowing trading partners to comment on, in particular, changes to mandatory schemes.<sup>72</sup>

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66 Australian Electrical and Electronic Manufacturers' Association of Australia, Transcript, 13 September 2007, Canberra, p. 13.

67 Master Plumbers and Mechanical Services Association of Australia, Submission 26, p. 4.

68 National Plumbing Regulators Forum, Submission 21, p. 12.

69 Department of Foreign Affairs and Trade, Submission 25, p. 1.

70 Department of Foreign Affairs and Trade, Submission 25, p. 1.

71 Department of Foreign Affairs and Trade, Submission 25, p. 3.

72 Department of Foreign Affairs and Trade, Submission 25, p. 4.

2.73 The Water Services Association of Australia argued that:

Product specifications and certification processes must, as far as practicable, recognise and/or harmonise with those of Australia's trading partners.<sup>73</sup>

2.74 It is important to acknowledge that in addition to guarding against potentially sub-standard plumbing products, stricter point-of-sale arrangements may also serve as a disincentive to the import of high – or in some cases higher – standard products, due to the additional costs of obtaining Australian Standards accreditation.<sup>74</sup>

2.75 However, the MPMSAA found that:

Anecdotal information from members suggest that overseas manufacturers will deliver to order ie:- marked with any symbols you request, ie: - WaterMark, AS or WELS.<sup>75</sup>

2.76 The NPRF argued that:

Any loss of sample selection should be offset by the assurance of product safety and fair trading considerations.<sup>76</sup>

2.77 The PPI Group suggested that these arrangements could also benefit the Australian export market:

The minimum requirement of compliance with the relevant Australian Standard and WaterMark as appropriate can in effect be used to assist Australian manufacturers to enter other markets with a strong reputation for quality.<sup>77</sup>

2.78 The Plumbing Industry Commission, Victoria, also observed that “...manufacturers that respond with better design to meet Australian conditions will be well positioned to sell into other markets”.<sup>78</sup>

### Committee Assessment

2.79 The Committee readily concedes the point made by the Department of the Environment and Water Resources that the point-of-sale issue existed prior to the introduction of WELS.

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73 Water Services Association of Australia, Submission 10, p. 2.

74 National Plumbing Regulators Forum, Submission 21, p. 14 and Mr John Baglin, Submission 17, p. 3.

75 Master Plumbers and Mechanical Services Association of Australia, Submission 26, p. 5.

76 National Plumbing Regulators Forum, Submission 21, p. 14.

77 Plumbing Products Industry Group, Submission 6, p. 12.

78 Plumbing Industry Commission, Victoria, Submission 18, p. 9.



2.80 The Committee is also aware that there are trade implications if point-of-sale, and consequently import, arrangements are changed to limit the sale of plumbing products that are not WaterMark certified. However, the Committee feels that such a restriction would go a long way to addressing the current confusion and frustration that customers and plumbers are experiencing. The Committee stresses that for the products covered by the WELS scheme, this issue will be addressed if Recommendation 2 (establishing WaterMark Certification as a prerequisite for WELS) is accepted.

## Enforcing the standards

2.81 Evidence to the Committee strongly indicated that improvements are needed when it comes to ensuring and enforcing plumbing product compliance with the relevant schemes and standards. As important as it is to set standards, it is equally as crucial to enforce these regulatory arrangements and supporting standards.

2.82 There are dangers associated with the installation of sub-standard products, including public health and environmental risks, premature system failure, and potential property damage.<sup>79</sup> This is supported by comments from the MPMSAA that:

...the current complexity in regulation and lack of policing through individual State plumbing authorities is not sufficiently protecting the community, and placing the liability onto the individual plumbing business.<sup>80</sup>

2.83 Standards Australia sees a need for, and supports, improving the way in which the current regulatory systems are enforced.<sup>81</sup> Global-Mark concurred that that existing rules were not the problem; rather, it was the lack of enforcement.<sup>82</sup> An appropriate level of audit and enforcement is essential to "...give surety to manufacturers that the investments they make to ensure compliance with local regulations have some level of protection against illegal imports and backyard operators."<sup>83</sup>

2.84 Inadequate enforcement practices can lead to an ineffective regulatory regime. For example, the Plumbing Products Industry Group felt that:

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79 Plastics Industry Pipe Association of Australia Ltd, Submission 3, p. 2.

80 Master Plumbers and Mechanical Services Association of Australia, Submission 26, p. 3.

81 Standards Australia, Submission 23, p. 5.

82 Global-Mark, Submission 5, p. 2.

83 Rheem Australia, Submission 14, p. 1.

The lack of action or publication [of malfeasance] by these organisations undermines Industry confidence in the WaterMark system.<sup>84</sup>

2.85 Similarly, in the case of the WELS Scheme, PPI expressed:

...concerns that the policing role of the WELS regulator has not been managed in a public way which provides confidence to participants and consumers. This role needs to be more proactive and publicly visible to ensure the scheme is not undermined in any way.<sup>85</sup>

...

Complaints to WELS on non-compliance have seemingly produced little or no response and this perceived inaction causes companies to wonder why they should bother complying when others seem able to not be affected by the legislation and/or requirements.<sup>86</sup>

2.86 In his submission, Mr Stuart Henry MP, was also critical of the Department's performance in relation to compliance under the WELS scheme:

It is my view that the WELS compliance unit at the Department...established to police the WELS program have been more intent on frustrating any orderly and quick resolution to the concerns raised over a long period of time.<sup>87</sup>

2.87 However, an AEEMA representative did observe that the 'legalistic' nature of the Act did not allow the Minister and his team enough flexibility for effective enforcement.<sup>88</sup>

2.88 The PPI Group informed the Committee that:

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.<sup>89</sup>

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84 Plumbing Products Industry Group, Submission 6, p. 7.

85 Plumbing Products Industry Group, Submission 6, p. 11.

86 Plumbing Products Industry Group, Submission 6, p. 12.

87 Mr Stuart Henry MP, Submission 12, p. 2.

88 Australian Electrical and Electronic Manufacturers' Association of Australia, Transcript, 13 September 2007, Canberra, p. 6.

89 Plumbing Products Industry Group, Transcript, 13 September 2007, Canberra, p. 4.

- 2.89 The Plumbing Industry Advisory Council supports a:
- ...more high profile audit role for the WELS Regulator to ensure that the intent of the Scheme is fully implemented and ensure confidence in the Scheme from all levels of the Australian community.<sup>90</sup>
- 2.90 Global-Mark recommended:
- Greater monitoring and supervision of certification companies and auditors involved in the WaterMark.
  - Development of a competency based WaterMark Auditor credentialing process: recognising personal attributes and communication skills for auditors, but also engineering and technical knowledge of standards, products and manufacturing techniques of products.<sup>91</sup>
- 2.91 HIA suggested that enforcement agencies may be hindered by a lack of resources to adequately fund the role.<sup>92</sup> While, the Committee acknowledged that this may be a significant obstacle, it felt that to be effective, “multi-point”<sup>93</sup> enforcement is needed; it cannot be left solely to retailers/consumers to make sure the product has the correct (WELS) label attached before purchase or to plumbers to make sure it is watermarked before installation. There needs to be accountability across the supply and installation chain.

### Committee Assessment

- 2.92 The Committee believes that effective and transparent enforcement is an essential element of regulatory arrangements. It was, therefore, concerned when the evidence, as outlined above, indicated that enforcement practices of plumbing product quality seem to be lacking.
- 2.93 The Committee is of the view that ineffective enforcement can undermine industry and community support and confidence in the schemes and standards in place. It agreed that higher profile enforcement of the relevant plumbing product standards is required to ensure that water efficiency and other quality standards are met, and that industry and community confidence is gained and maintained.

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90 Plumbing Industry Advisory Council, Victoria, Submission 19, p. 3.

91 Global-Mark, Submission 5, p. 3.

92 Housing Industry Association, Submission 20, p. 16.

93 Plumbing Industry Commission, Submission 18, p. 8.

### **Recommendation 3**

- 2.94 **The Committee recommends that the Department of the Environment and Water Resources examine its current enforcement practices for the WELS Scheme.**

### **Recommendation 4**

- 2.95 **The Committee recommends that the National Plumbing Regulators Forum, take a lead role in exploring, in consultation with government and industry stakeholders, options to improve the audit and enforcement profile for ensuring plumbing product quality in Australia.**

## **Who should administer the regulatory arrangements?**

- 2.96 A further issue considered by the Committee was the most appropriate level of government to administer the regulatory arrangements for controlling the quality of plumbing products in Australia.

### **State/Territory administration**

- 2.97 The Department of Environment and Water Resources supported the responsibility for plumbing regulation under the PCA remaining with the state and territories.<sup>94</sup>
- 2.98 Similarly, the NPRF was a strong advocate for states and territories retaining responsibility for administering plumbing product regulatory arrangements:

The current custodians of plumbing product quality regulation, the State and Territory regulators through the National Plumbing Regulators Forum (NPRF), remain the most appropriate to administer any certification or approval scheme for these products.

In any model, the states, as the level of government with the primary charter and jurisdiction for regulating general plumbing, building, human health and safety and fair trading matters, are the

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94 Department of the Environment and Water Resources, Submission 28, p. 5.

appropriate level of government to administer plumbing product quality regulation.<sup>95</sup>

2.99 While Workplace Standards Tasmania believes that the state and territories are the appropriate level of government to administer plumbing product quality, it does see a role for the Australian Government, as "...an active participant...[that can] drive and set policy and efficiency targets for the State regulators".<sup>96</sup> The PPI Group suggested that the States need the appropriate tools – and the WELS Regulator – to ensure that standards are enforced.<sup>97</sup>

2.100 However, an issue of concern with the current state based administration is the ability of state water authorities to establish local codes and standards.<sup>98</sup> AEEMA has found that:

The trend for local government to introduce local deviations incurs considerable extra costs ... often for no apparent environmental or safety benefit.<sup>99</sup>

2.101 The HIA also questioned the "...need for local variations to the extent that they presently operate".<sup>100</sup>

#### Australian Government administration

2.102 AEEMA took the view that:

...regulation must be consistent across jurisdictional boundaries. This does not necessarily mean that regulation must be administered by the Commonwealth – although a single national regulatory regime lends itself more to national consistency than, say, eight regimes administered by the states and territories.<sup>101</sup>

2.103 The NPRF argued that:

Regulation through individual state compliance auditing alone does not afford the Australian public the level of protection it needs.<sup>102</sup>

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95 National Plumbing Regulators Forum, Submission 21, p. 4.

96 Workplace Regulations Tasmania, Department of Justice, Submission 15, p. 5.

97 Plumbing Products Industry Group, Transcript, 13 September 2007, Canberra, p. 12.

98 For example see Master Plumbers and Mechanical Services Association of Australia, Submission 26, p. 5.

99 Australian Electrical and Electronic Manufacturers' Association, Submission 22, p. 1.

100 Housing Industry Association, Submission 20, p. 12.

101 Australian Electrical and Electronic Manufacturers' Association, Submission 22, p. 1.

102 National Plumbing Regulators Forum, Submission 21, p. 4.

- 2.104 Evidence from the National Plumbing Associations Alliance (NPAA) supported a move to Commonwealth administration of “...not only plumbing product regulation, but plumbing regulation in general”. It argued that national consistency cannot be achieved in a situation where every state jurisdiction controls the legislation that regulates plumbing practices.<sup>103</sup>
- 2.105 Caroma Dorf supported Australian Government control of plumbing product compliance but believed that installation requirements should remain the domain of the states.<sup>104</sup> However, the Committee shares the Tasmanian Government’s concern that such a split would lead to a disjointed, ineffective and, ultimately, counterproductive regulatory process.<sup>105</sup>
- 2.106 The Committee does support industry calls for a more unified scheme. It noted the Plumbing Industry Commission’s suggestion that such a scheme could be administered by:
- a Commonwealth government agency (as now applies with the WELS scheme); or
  - an authorized national body (as now applies with the WaterMark Certification Scheme); or
  - another national co-ordinating body such as the NPRF - but one equipped with the resources, expertise, networks and contractual relationships to define, codify, promote and enforce standards.<sup>106</sup>

### A national body

- 2.107 The Housing Industry Association recommended:

That a national plumbing regulator should be responsible for coordinating the development of relevant plumbing standards to ensure consistency across the range of plumbing products and to remove any duplication and to ensure that product installation standards and manufacturing standards do not conflict.<sup>107</sup>

- 2.108 The PPI Group recommended that:

...a new Intergovernmental Agreement (IGA) should be negotiated by the nine governments to take forward the future plumbing regulation agenda. This IGA could also: clarify the

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103 National Plumbing Associations Alliance, Submission 9, p. 7.

104 Caroma Dorf, Submission 11, p. 10.

105 Workplace Standards Tasmania, Department of Justice, Submission 15, p. 5.

106 Plumbing Industry Commission, Victoria, Submission 18, p. 10.

107 Housing Industry Association, Submission 20, p. 17.

objectives of plumbing regulation reform; strengthen the commitment to national consistency; and affirm the importance of a whole-of-government approach to plumbing regulation and conservation.<sup>108</sup>

2.109 Similarly, the Plumbing Industry Advisory Council (PIAC) recommended:

...a more formalised and better resourced structure for the NPRF be implemented, with industry participation at the highest level of operation, focused on the Plumbing Code of Australia and associated regulation and product standards regimes;

...the new NPRF entity also be authorised and resourced to oversee all water conservation initiatives delivered through Federal and State Government agencies.<sup>109</sup>

2.110 The HIA suggested that:

A national regulator could take on responsibilities for:

- The development and maintenance of the Plumbing Code of Australia,
- Reviewing all existing state and local regulations which conflict with the PCA,
- Administration of the WELS and WaterMark certification processes,
- Coordination of the development of all Australian Standards for plumbing products,
- Review and maintain all existing Australian Standards for plumbing products.<sup>110</sup>

2.111 Another proposal for a national administrative group is to formally establish "...an Australian Plumbing Codes Board (APCB) similar in structure to the Australian Building Codes Board". The PPI Group envision the new APCB maintaining and updating the PCA, working to harmonise plumbing regulations across jurisdictions, and rigorously analysing proposals to incorporate environmental requirements into plumbing regulations.<sup>111</sup>

2.112 Evidence received also indicated that while the Australian Building Code Board may provide a useful model, it would be inappropriate to attempt

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108 Plumbing Products Industry Group, Submission 6, p. 5.

109 Plumbing Industry Advisory Council, Victoria, Submission 19, p. 5.

110 Housing Industry Association, Submission 20, p. 7.

111 Plumbing Products Industry Group, Submission 6, p. 4.

to include plumbing as an arm under this code, as the plumbing sector extends beyond the building industry.<sup>112</sup>

2.113 Mr Stuart Henry MP suggested that the APCB could take responsibility for administering the WaterMark standards and potentially the WELS Scheme. He also highlighted the need for this to be done in cooperation with the states.<sup>113</sup>

2.114 The South Australian Government expressed support for:

- A central independent governing body that assesses ...licensed/non licensed product to be fit for purpose, material attributes, plumbing safety and water conservation; [and]
- A central register to manage and control authorised/ unauthorised product for importers/ developers/ regulators/ industry practitioners to reference.<sup>114</sup>

2.115 It recognised that such an independent body, with the backing of Commonwealth legislation, could administer a scheme to control the importation of plumbing products, ensure that minimum performance requirements are met (to an Australian or equivalent standard), and progress plumbing product innovation with a view to water conservation and future sustainability.<sup>115</sup>

#### Committee Assessment

2.116 The Committee was disappointed to learn that only four of the states and territories have adopted the Plumbing Code of Australia, either in full or in part.<sup>116</sup> It felt that a wider adoption of the PCA and establishment of a national cooperative body could help address some of the persistent concerns regarding current regulatory arrangements for controlling plumbing product quality in Australia.

2.117 The Committee believes that, irrespective of whether administering the regulation of plumbing product quality remains with the states/territories or becomes an Australian Government responsibility, there is a need for greater cross-jurisdictional cooperation.

2.118 The Committee is of the view that the evidence received conveys industry support for a national body to coordinate regulatory arrangements for plumbing product quality in Australia. It agrees that a national regulator

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112 Mr Stuart Henry MP, Transcript, 13 September 2007, Canberra, p. 15.

113 Mr Stuart Henry MP, Transcript, 13 September 2007, Canberra, pp. 5 and 14.

114 Government of South Australia, Submission 29, p. 3.

115 Government of South Australia, Submission 29, p. 3.

116 Tasmania, Australian Capital Territory, Queensland and South Australia.



or administrative body could bring certainty, remove a number of levels of bureaucracy and serve as a central information point for manufacturers, consumers, plumbers and importers.

- 2.119 However, the Committee is mindful that any decision to move from state to Australian Government control cannot be taken lightly. In the case of regulating plumbing product quality, the Committee felt that further work must be undertaken before an effective model can be developed, agreed upon and implemented. As noted earlier, the NPRF is in the process of formalising its arrangements under an intergovernmental agreement. It may be that the NPRF will then be well placed to take on a substantial regulatory coordination role that includes some of the areas of responsibility discussed above.

### **Recommendation 5**

- 2.120 **The Committee recommends that COAG explore options for constituting a national coordinating body that can take responsibility for improving the coordination and cohesion of regulatory arrangements for controlling plumbing product quality in Australia, including the mandatory schemes, relevant standards and their application across jurisdictions.**

### **Additional issues**

- 2.121 The Committee was impressed with the quality of evidence received in the course of this inquiry. It acknowledges the evidence provided on a number of other industry issues such as the need for effective regulatory oversight of installation and plumbing workmanship quality – beyond ensuring the quality of the product itself; industry skills shortages and training arrangements; environmental benefits achievable through the promotion of dual-flush toilets; and the lack of uniform regulatory arrangements on grey water systems. While important issues, these were beyond the scope of and timeframe for this inquiry.
- 2.122 However, there was one key additional issue that the Committee feels that it is important to comment on, namely the need for greater focus on communication with industry stakeholders and the community. In the case of WELS for example, the Department indicated that to date, WELS advertising had focused on retailers and others in the supply chain, with

information for consumers available primarily through the WELS website.<sup>117</sup> Caroma Dorf called for industry to take "...a proactive approach to market education...[to drive] the key messages as a structured and decisive industry body with long term objectives".<sup>118</sup>

- 2.123 The Committee noted the NPRF's current efforts to develop a WaterMark marketing strategy and regulatory compliance promotion.<sup>119</sup> It also noted that the Department is working cooperatively with the PPI Group to provide an information pamphlet for customers explaining the purposes of and difference between the two schemes.<sup>120</sup>
- 2.124 While the Committee commends these efforts to improve communication, in the case of the latter pamphlet, it would suggest that Department and other groups direct their efforts into exploring options for establishing closer linkages between the schemes and promoting their implementation and operation to industry and consumers, rather than focusing on differentiating WELS and WaterMark.
- 2.125 The Committee believes that whatever changes are made to the regulatory arrangements for managing plumbing product quality, educating industry and the community will be necessary if effective operating systems are to be realised.

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117 Department of the Environment and Water Resources, Submission 28, p. 4.

118 Caroma Dorf, Submission 11, pp. 11-12.

119 National Plumbing Regulators Forum, Submission 21, p. 12.

120 Departments of the Environment and Water Resources, Submission 28, p. 4.