



Australian Government

Department of the Environment and Water Resources

Submission No: ..... 28 .....

Date Received: ..... 12-9-07 .....

Secretary: ..... *[Signature]* .....

**Submission to the House of Representatives  
Standing Committee on Environment and Heritage**

**Inquiry into the regulation of plumbing product quality  
in Australia**

**September 2007**

**Introduction**

1. The Department of the Environment and Water Resources (DEW) administers the Water Efficiency Labelling and Standards (WELS) Scheme, which is established under the Commonwealth *Water Efficiency Labelling and Standards Act 2005* (the Act) and corresponding state and territory legislation. The Act commenced on 18 February 2005.
2. Establishment of the WELS Scheme was one of the outcomes identified in the 2004 Intergovernmental Agreement on the National Water Initiative. The Agreement listed “implementation and compliance monitoring of WELS, including mandatory labelling and minimum standards for agreed appliances” as a Key Action for demand management for urban water reform.
3. DEW is aware that sections of the plumbing industry have concerns about the effectiveness of the regulation of plumbing product quality in Australia and the role of the WELS Scheme in mandating product quality.
4. Representations have been made to the Minister for the Environment and Water Resources requesting government action to provide that WELS should require WaterMark certification as a prerequisite for registration of products under the WELS Scheme.

**Current regulatory arrangements**

**WaterMark**

5. Regulation of the quality of plumbing products at the point of installation is the responsibility of states and territories through the Plumbing Code of Australia. The Code is published by the National Plumbing Regulators Forum, a national policy advisory body whose members represent bodies responsible for regulation of on-site plumbing and/or occupational registration.
6. The Code, which was published in December 2004, is given legal effect by relevant legislation in each state and territory. Any provision of the Code may be overridden by, or subject to, state and territory legislation.
7. The Code requires that plumbing and drainage products listed in the Code must have a WaterMark certification. Without this certification, they cannot be legally installed in accordance with State and Territory plumbing legislation.

8. WaterMark is a certification trademark owned by Standards Australia Limited and used in relation to water supply, sewerage, plumbing and drainage goods. Independent certifying bodies (currently six) approved by Standards Australia are granted the right to enter into licence agreements with product users and manufacturers for use of the WaterMark.



9. A WaterMark licence confirms that the product complies with the requirements of the Plumbing Code of Australia and the specifications listed in relevant Australian Standards. The specifications relate to the quality of the product, including aspects of health and safety, and warrant that it is fit for purpose. Use of the WaterMark is not limited to goods manufactured in Australia; it may be used on goods imported into Australia.

10. State, territory and local governments collectively ensure compliance with the Plumbing Code, including the requirement that only WaterMarked products are installed. Plumbers are required to meet the appropriate standards under their licence, with inspections carried out on building sites, mainly in relation to new buildings, by plumbing regulators.

11. A WaterMark licence is not required for a product to be legally sold in Australia.

### **The WELS Scheme**

12. The Water Efficiency Labelling and Standards (WELS) Scheme is a national regulatory programme administered by DEW on behalf of all Australian governments. WELS is a cooperative scheme, and all states and territories have enacted corresponding legislation to confer regulatory powers to the WELS Regulator (the Secretary of DEW).

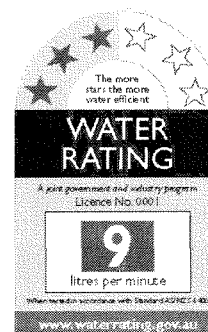
13. The purpose of the Scheme is:

- (a) to conserve water supplies by reducing water consumption;
- (b) to provide information for purchasers of water-use and water-saving products;
- (c) to promote the adoption of efficient and effective water-use and water-saving technologies.

14. The Scheme requires the registration and labelling of specified products in relation to their water efficiency. It also provides a means of requiring minimum water efficiency standards, an important policy tool in relation to urban water demand management. Minimum water efficiency standards currently apply only to toilets, but work has recently commenced on an examination of options for introducing them for other products.

15. Registration of products commenced in mid-2005 and has been mandatory since 1 July 2006. The products are:

- Showers
- Lavatory equipment
- Urinal equipment
- Tap equipment
- Flow controllers (optional)
- Dishwashers
- Clothes washing machines.



16. The Scheme was explicitly developed to *only* provide labelling information about the water efficiency of products and not the quality of products. The Regulation Impact Statement for the Act stated that:

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. (p. 50)

17. The Act requires that a determination must set out, or incorporate by reference, the WELS standard for the products. The determination names the WELS standard as AS/NZS 6400:2005 *Water efficient products – Rating and labelling*. Standards Australia holds the copyright for this standard.

18. The WELS standard is required to set out criteria for rating the products in relation to either or both water efficiency and general performance. The standard also sets out the requirements in relation to communicating such ratings on product labels.

19. The WELS standard lists the performance requirements relating to water efficiency that must be met in order for a product to be registered and given a WELS star rating. The tests and other details of performance requirements are set out in the Australian standards that apply to each product.

20. The Australian standards that are used by WELS are also referenced by the WaterMark certification scheme. Performance criteria that relate to the water efficiency of products are common to both schemes.

21. The WELS standard does not require that products meet every requirement of the relevant product standards. This is because some of those requirements are not related to the water efficiency of the product and are thus outside the scope and objectives of the WELS legislation.

22. To remove uncertainty and to clearly identify which performance criteria relate to water efficiency, the initial WELS standard was amended, effective 15 February 2007.

23. WELS requires applicants for registration to provide reports showing that the product has been tested in relation to the performance requirements listed in the WELS standard. Applicants can use a WaterMark certificate to confirm that the product has undergone the testing. About 85 per cent of WELS registration applications make reference to a WaterMark certificate. However, the number of registered products that indicate WaterMark certification does not necessarily equate with the volume of product on the market.

24. Around 15 per cent of WELS products do not reference a WaterMark certification when applying for registration. We know that about two-thirds of these products would not meet the requirements for WaterMark (see below in relation to zero rated products). For the remaining third (5 per cent of all WELS products), we have no information about whether they have WaterMark certification or not. We are aware that some suppliers choose not to seek WaterMark certification even though it is possible the products may meet product standards.

25. Consumers are likely to be unaware of the requirements of the Plumbing Code and not distinguish between the purpose of the WELS and WaterMark schemes. Consumers may perceive that the WELS label is an endorsement that the product is 'fit for purpose' and of good quality, rather than simply an indication of water efficiency. WELS is currently working cooperatively with the Plumbing Products Industry Group to produce an information pamphlet for consumers that explains the purposes and differences between WELS and WaterMark. This information will be placed on WELS and other relevant websites and could also be provided at point of sale.

26. WELS advertising has to date been focussed on retailers and others in the supply chain who have compliance obligations in relation to registration, labelling and advertising of products. Consumer information about the meaning of the WELS label is available primarily through the WELS website. However, the Department is now moving into a new communications phase targeted at consumers, building specifiers and others who make product purchasing decisions.

### **Environmental benefits**

27. DEW has not been presented with evidence by industry that the quality of a product's materials, design and manufacture inevitably leads to greater water efficiency.

28. WELS product registrations indicate that WaterMarked products are not necessarily more water efficient than those without that certification. There are WaterMarked products in each of the star ratings.

29. However, it should be noted that WaterMarked products are always at least a 1-star water efficiency rating, as they meet the necessary performance criteria to gain a WELS star rating.

30. Products that do not meet water efficiency performance requirements are given a zero rating. 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.

31. The zero rating is available because the WELS Scheme provides consumers with information about the water efficiency of products, including the fact that some are not water efficient. Where minimum water efficiency standards apply (currently only in the case of toilets), there are no zero rated products.

32. As indicated in Table 1, about 10 per cent of registered products have a zero rating. This does not, however, necessarily equate with the volume of product on the market. Flow controllers have not been included in the figures, as registration of this product is optional. There are no zero rated flow controllers currently registered.

33. DEW has been requested by the Environment Protection and Heritage Ministerial Council to, amongst other things, examine the options for introducing minimum standards for showers and urinals. This work is currently underway.

34. If the WELS Scheme were not to allow registration of zero rated products, this would remove from the market the 10 per cent of WELS products that we know do not meet WaterMark requirements in relation to water efficiency. This can be progressed through the WELS standard.

**Table 1: Number of zero rated plumbing products registered for WELS**

<b>Product</b>	<b>Total number registered</b>	<b>Number of zero rated registrations</b>
Showers	2,193	356
Taps	4,340	378
Toilets	856	Nil (minimum standards apply)
Urinals	81	21
<b>Total</b>	<b>7,470</b>	<b>755</b>

## **Trade**

35. A broader issue that needs to be clarified is whether WaterMark acts as a trade barrier. Does WaterMark certification support the efficient operation of the market without unduly impeding trade, both nationally and internationally, or the entry of businesses or products into the market? The benefit of requiring an Australian certification needs to be clearly demonstrated. This is an issue that is not the responsibility of the Department of the Environment and Water Resources. We note however, that regulation affecting the plumbing goods market should exist only where there is a clear economic, social or environmental benefit and where it achieves a specific policy intent.

## **Considerations**

36. At face value the linking of WaterMark as a prerequisite for WELS appears attractive as a pragmatic solution to avoid consumer confusion. Regulatory models however, are not simple and are even more complicated in the intersection between Commonwealth and state regulation. Regulatory compliance and enforcement arrangements rely on clearly delineated roles and responsibilities.

37. Currently, under the WELS Act, the role of the WELS Regulator is clear and relates only to water efficiency. The WELS Act and the supporting WELS standard deliberately do not address product quality. Legal advice to the Department indicates that the scope and objectives of the WELS Act would not allow WaterMark certification as a prerequisite for WELS registration. This reflects the fact that many of the compliance requirements of WaterMark certification are not related to water efficiency.

38. There is a general principle that a delegated legislative power, such as the power to make a determination, cannot be delegated to someone else unless the relevant Act allows sub-delegation. There is a significant risk that imposing an obligation that a product hold third party certification (i.e. WaterMark) would involve an impermissible sub-delegation of power by the Minister under the WELS Act and hence would be invalid. That is, as the Minister is not involved in WaterMark certification, he would effectively be delegating the power to set standards that apply to WELS products to whoever determines the standards for WaterMark certification. This is in contrast to the current arrangement, where the Minister determines the WELS standard.

39. The Department therefore does not support making WaterMark a prerequisite for WELS registration. It is important that the states and territories maintain their responsibility for plumbing regulation under the Plumbing Code of Australia and for

other matters related to building and planning codes. The Plumbing Code, rather than the WELS Scheme, is and should remain, the primary instrument for regulating plumbing product quality.

40. To reduce the incidence of products being sold that should not be installed, it is possible to align the minimum water efficiency requirements for WELS with those of WaterMark. This would remove from the market zero rated WELS products (10 per cent of current WELS products) that do not meet performance criteria common to both schemes. This is consistent with the purpose of the WELS Scheme and can be achieved under the current WELS Act. This would require a new determination by the Minister, following consultation with the states and territories, and consideration of a market transition period.

41. For the 5 per cent of products that do not reference a WaterMark certification, the Department can work with state and territory regulators to provide relevant information that will inform their compliance and enforcement action in relation to the Plumbing Code of Australia. This would create a circumstance where it is unlikely that a WELS labelled product could not be legally installed under the Plumbing Code.

42. Work is already underway to establish minimum water-efficiency requirements for several WELS products (see paragraph 33 above). By pursuing this course, the integrity of both the WELS Scheme and the Plumbing Code would be maintained.