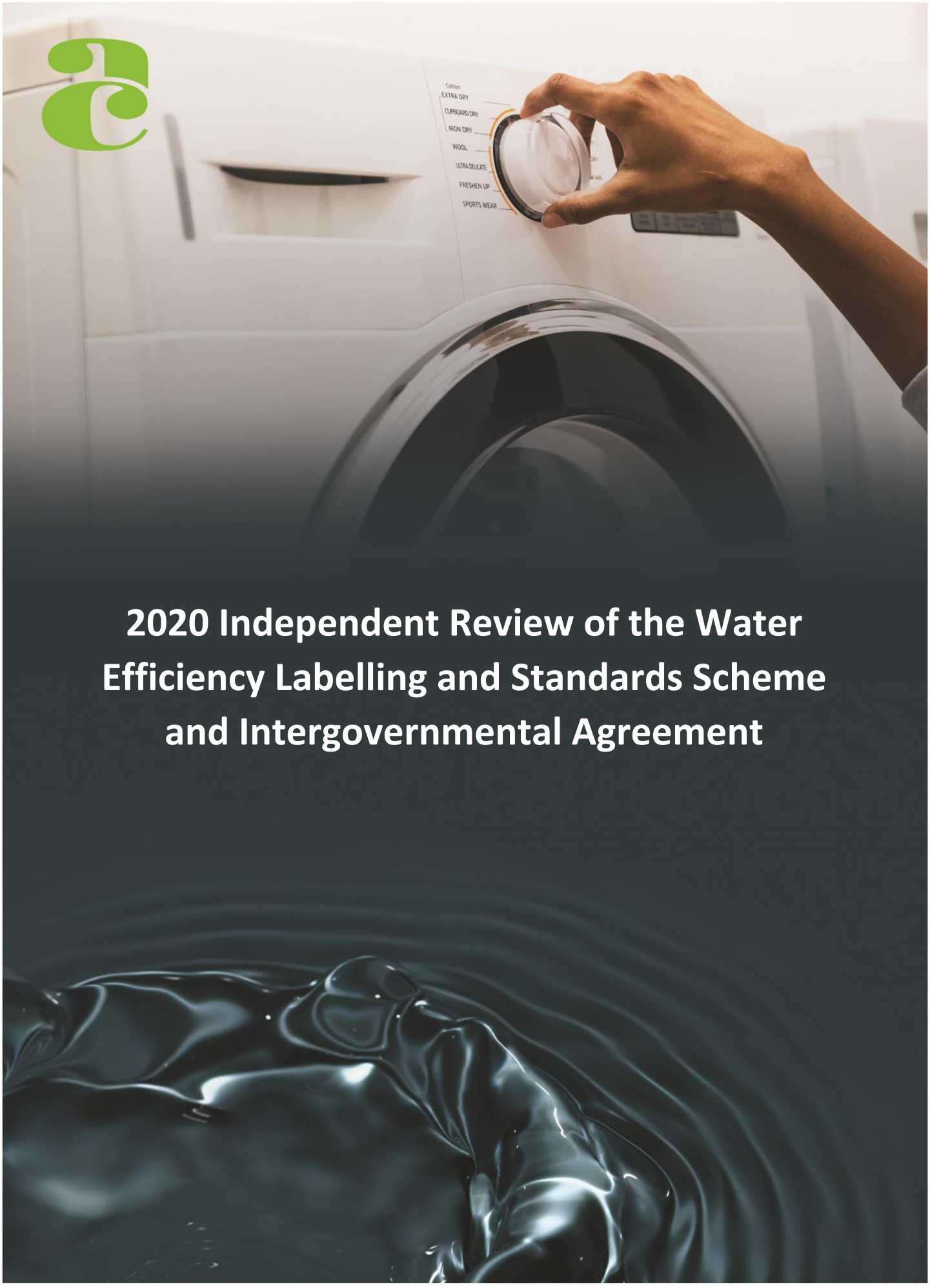

2020 Independent Review of the Water Efficiency Labelling and Standards Scheme and Intergovernmental Agreement

ALLEN+CLARKE CONSULTING

ACKNOWLEDGEMENTS

The original artwork in our Acknowledgement of Country was produced by Emma Walke. Emma is a Bundjalung Aboriginal woman from northern New South Wales.

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ABOUT *ALLEN + CLARKE*

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FOREWORD

Since its inception in 2005, the Water Efficiency Labelling and Standards (WELS) Scheme has embedded itself in the national consciousness as a mechanism for encouraging more efficient domestic water use. The WELS Scheme has been found to be saving each Australian on average 12.4 litres per day (Institute for Sustainable Futures, 2018), and is supporting international best practice by acting as the basis for the development of a Standard for the International Organisation for Standardisation.

In this third mandated review of the WELS Scheme, we considered the design, effectiveness, efficiency and cost of the WELS Scheme and found that the WELS Scheme continues to add value by achieving the legislative objectives that have been set out for it. This Review provides a range of recommendations to further enhance and improve the WELS Scheme to continue to conserve water supplies and reduce water consumption; to provide more information for purchasers of water-use and water-saving products and to further promote the adoption of efficient and effective water-use and water-saving technologies.

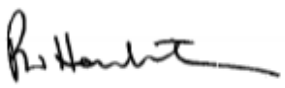
Alongside the review of the WELS Scheme, we undertook a review of the WELS Intergovernmental Agreement (IGA) which was established in 2005 by the Commonwealth and states and territories as a precursor to the establishment of the WELS Scheme. Since the establishment of the WELS IGA, eight Acts have been passed, a national Regulator has been established, and a single registration system has been developed to provide for consistent, mandatory water efficiency standards for specific products. This is the first independent review undertaken of the IGA since its inception and it provides a range of recommendations to enhance the IGA.

Part A of this Report includes the Review of the WELS Scheme and Part B includes the Review of the WELS IGA. Whilst there are synergies between the two reports, and the recommendations in both reports are designed to act in a complementary manner, the reports have been drafted to be read independently.

I would like to take this opportunity to thank all the stakeholders who were so generous with their time and knowledge of the WELS Scheme and contributed to these Reviews. I also wish to thank key staff members at the Department of Agriculture, Water and the Environment including Kirsty Bunfield, Teresa McMaugh, Paul Jung and David Jongeneel for their collegiality and professionalism during the course of these Reviews.

I also thank the Review team at *Allen + Clarke* who worked with great commitment and flexibility including Linda Gyorki, Mardi Trompf, Danny Eyre, Pauline Van and others across *Allen + Clarke.*

Finally, I would like to thank the Minister for Resources and Water, the Hon. Keith Pitt MP as well as the WELS Regulator, Rachel Connell for the opportunity to undertake these Reviews. We hope the recommendations outlined in both Reviews will support the further strengthening of the WELS Scheme.



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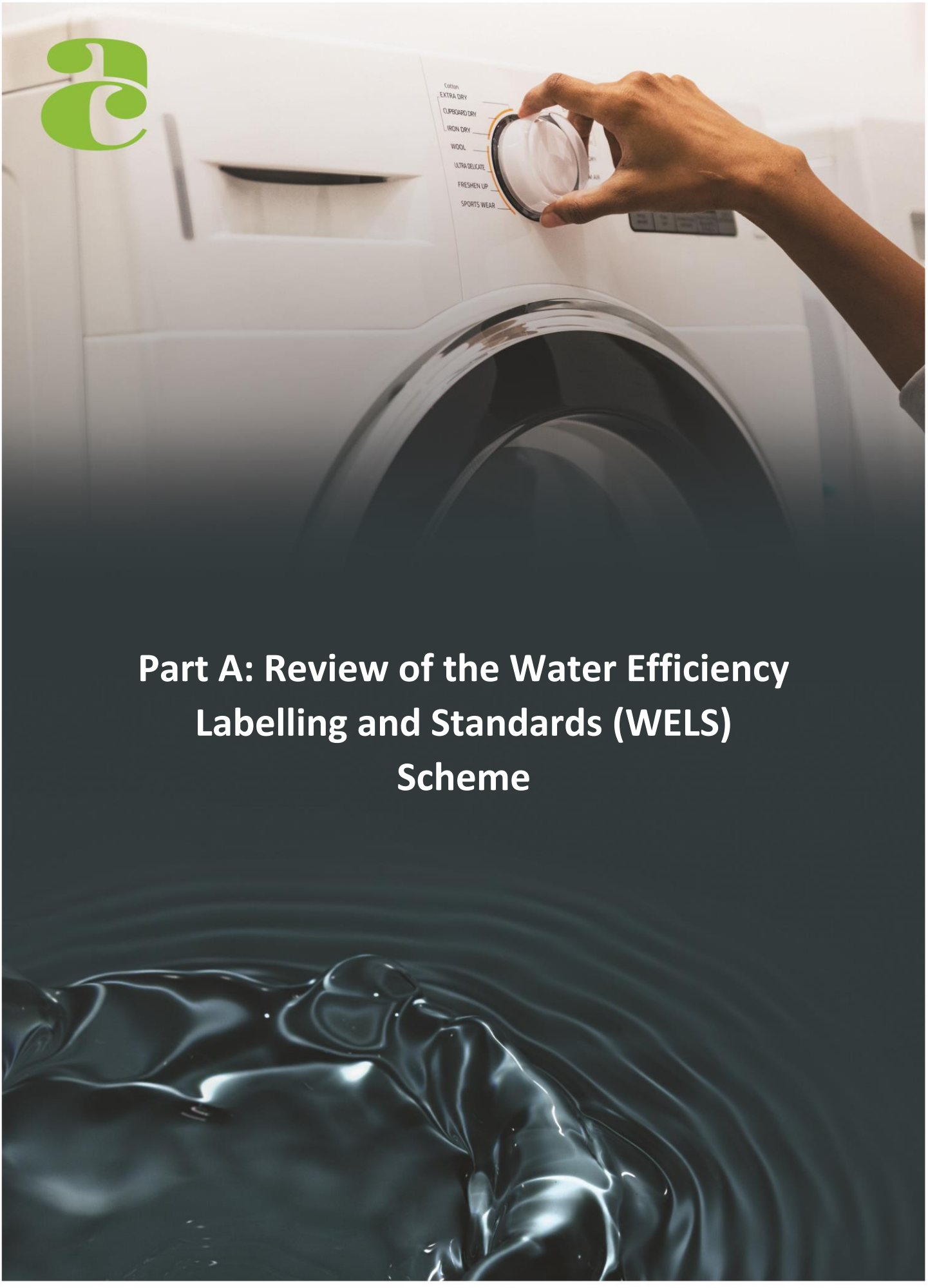

Part A: Review of the Water Efficiency Labelling and Standards (WELS) Scheme

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GLOSSARY[1]

ABCB	Australian Building Codes Board
CAB	Conformity Assessment Body
COAG	Council of Australian Governments
Criminal Code	*The Criminal Act 1995* (Cth)
CRIS	Cost Recovery Impact Statement (WELS Scheme)
Cth	Commonwealth of Australia
CWCC	China Water Conservation Certification
CWEL	China Water Efficiency Label
The Department	Department of Agriculture, Water and the Environment (Australian Government)
E3 Program	Equipment Energy Efficiency
Flow controller	A flow controller located within or at the end a product's water flow passage
GEMS	Greenhouse and Energy Minimum Standards
GEMS Act	*The Greenhouse and Energy Minimum Standards Act 2012* (Cth) (GEMS Act) came into effect on 1 October 2012 and provides a national framework for equipment and appliance energy efficiency throughout Australia. It replaces previous state and territory efficiency regulations.
GHG	Greenhouse gas
ICT	Information and Communications Technology (project upgrade)
IGA	Intergovernmental Agreement
ISO	International Organization for Standardization
KII	Key Informant Interviews
KPIs	Key Performance Indicators
Minimum Water Efficiency Standard	A standard that sets minimum water efficiency requirements for specific products.
Model code	The unique identifier of a particular model in the WELS database which may be used to assist the identification of the registration status of a model.
Model name	The name by which the model is identified as it is supplied; it may include alpha and/or numeric characters.
MWELS	Mandatory Water Efficiency Labelling Scheme (Singapore)
NCC	National Construction Code
NWI	National Water Initiative
Registration process	The WELS registration process will generate a WELS licence number and a rating for the product will be awarded at this stage.

[1] Note that some definitions are drawn and adapted from the WELS Standard (Standards Australia, 2016a)

ABCB	Australian Building Codes Board
Regulator Performance Framework	Published by the Department of the Prime Minister and Cabinet on 1 October 2014, the Framework is part of the Australian Government's commitment to reduce the cost of unnecessary or inefficient regulation imposed on individuals.
SAWM	Smart Approved WaterMark
SCEW	Standing Council on Environment and Water
Shall	As referenced in the WELS Standard (Standards Australia, 2016a). Indicates that a statement is mandatory.
Toilet/Toilet suite	A combination of a water closet (or WC) pan and a flushing control mechanism, intended to be supplied or installed as a set.
Urinal/Urinal suite	A combination of a water-using urinal and a urinal-flushing control mechanism that is intended to be supplied or installed as a set.
WaterMark Certification Scheme	The WaterMark Certification Scheme is a mandatory certification scheme for plumbing and drainage products to ensure they are fit for purpose and appropriately authorised for use in plumbing and drainage installations.
WELS	Water Efficiency Labelling and Standards
WELS Act	The *Water Efficiency and Labelling Standards Act* 2005 (Cth) or the corresponding state and territory acts as amended from time to time.
WELSAG	WELS Advisory Group (Industry)
WELS database	A list of all registered WELS Scheme products. This is available at www.waterrating.gov.au
WELS Determination	A legislative instrument made by the Minister under Section 26 of the WELS Act, which sets out the requirements of the WELS Scheme, including the products covered by the Scheme and the registration period. Also, a legislative instrument made under the *WELS (Registration Fees) Act* 2013 (Cth), known as the WELS Fees Determination, which sets fees for registration. Both can be found at www.waterrating.gov.au
WELS IGA	WELS IGA
WELS label	This includes the Water Rating label/Star Rating label, Water Warning label/Zero Star Rated label and any of these labels with the Additional Information label if required.
WELS product	A single product or model including any variants as specified in Section 2 of WELS Standard (Standards Australia, 2016a).
WELSOG	WELS Officials Group
WELS Regulator	The WELS Standard defines this as 'In Australia, the person designated under the WELS Act to administer the WELS Scheme' (Standards Australia, 2016a, p. 11). For the purposes of this Review, the 'WELS Regulator' is to be interpreted as the group of people managing the operations of the WELS Scheme within the Department of Agriculture, Water and the Environment.
WELS Scheme	The title given to Australia's compulsory water efficiency labelling standards for water-using or water-saving products. The WELS Scheme is a joint initiative of the Commonwealth and state and territory governments.

EXECUTIVE SUMMARY

This third Review of the Water Efficiency Labelling and Standards (WELS) Scheme presents the findings and recommendations from independent reviewers Allen + Clarke Consulting. Five-yearly reviews of the operation of the WELS Scheme are mandated under Section 76 of the *Water Efficiency Labelling and Standards Act 2005* (Cth), with the reviews managed by the Commonwealth Department of Agriculture, Water and the Environment. This 2020 Review has sought to align its inquiry with the two previous reviews in 2010 and 2015, and to build on the work undertaken in those Reviews.

The WELS Scheme was established in 2005 as a national instrument for encouraging more efficient domestic water use and reducing demand for potable water by informing consumers about water efficiency at the point of sale. The WELS Scheme requires specified products to be registered and labelled with their water efficiency in accordance with the standard set under the WELS Act, which is supported by relevant subordinate legislation including the *WELS Regulations 2005* (Cth) and complementary state and territory legislation.

The objectives of the WELS Act are:

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

This Review considered the appropriateness and relevance of the WELS Scheme across three themes:

Design

Effectiveness

Efficiency + Cost

- **Design:** To what extent do the objectives and overall design of the WELS Scheme continue to be appropriate?
- **Effectiveness:** To what extent does the WELS Scheme and its administration achieve the objectives of the WELS Act?
- **Efficiency and Cost:** To what extent does the administration of the WELS Scheme meet benchmark principles of regulatory practice in terms of efficiency and cost?

The Review found that, overall, the WELS Scheme continues to add value by achieving its objectives under the WELS Act, and to manage priorities and stakeholder relationships effectively. Nationally, the majority of stakeholders interviewed, and those who provided submissions, viewed the WELS Scheme's objectives as still being relevant in 2020. With an International Organization for Standardisation (ISO) Standard based on the WELS Scheme currently being developed for international application, the Scheme also has international relevance and is being held as an international benchmark.

In the 2017–18 year, the estimated savings from the WELS Scheme and associated measures were 112 gigalitres per year across Australia (the equivalent of 21% of water supplied for all purposes in Greater Sydney). The Institute for Sustainable Futures (2018) has predicted that these savings will grow to 185 gigalitres/year in 2026 and 231 gigalitres/year in 2036. The WELS Scheme is

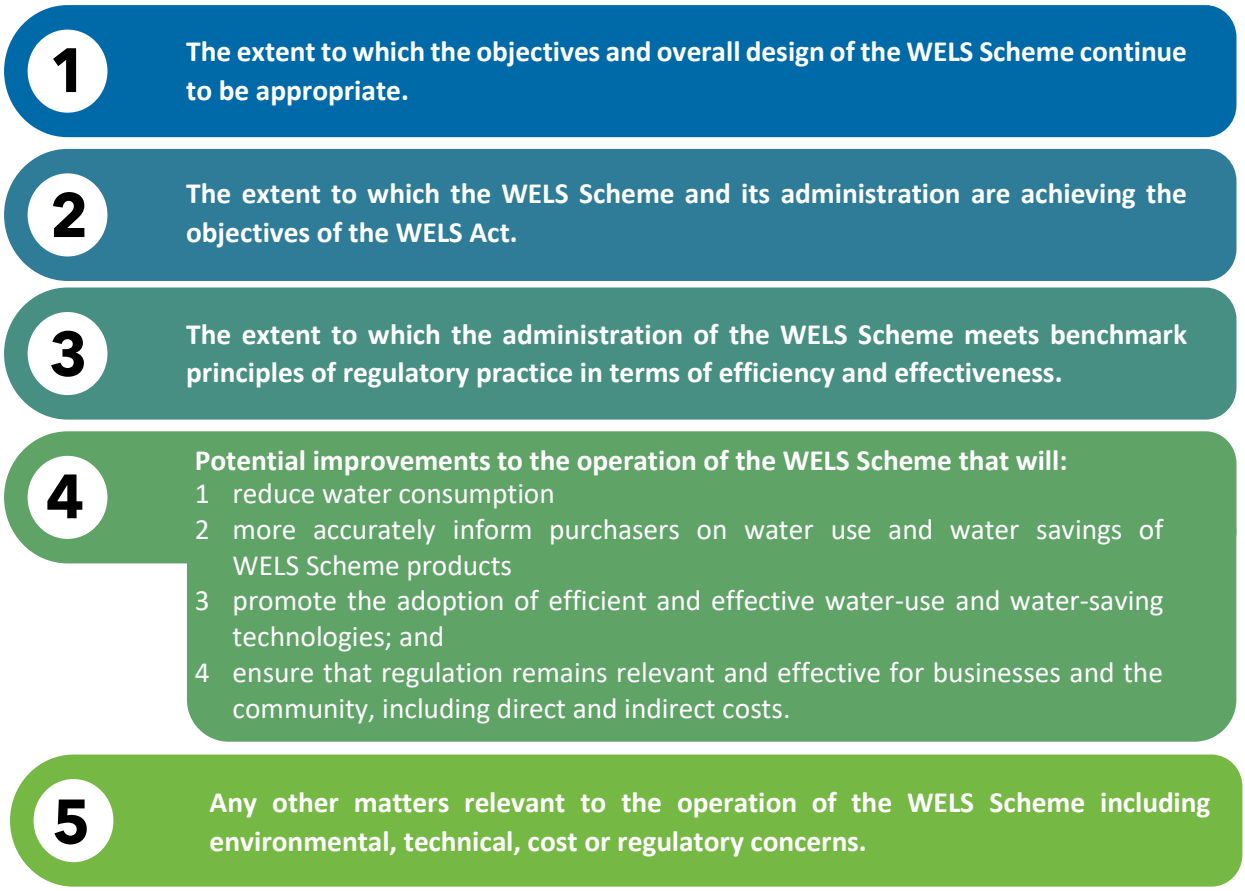
saving each Australian on average 12.4 litres per day, which is predicted to grow to 19.5 litres by 2036 (Institute for Sustainable Futures, 2018).

Given the WELS Scheme's success in meeting its objectives, the main goal of which is to reduce water consumption and contribute to water efficiency, the Review supports the Scheme being retained. However, there are several opportunities for improvement to ensure that the WELS Scheme continues to achieve gains in a rapidly evolving environment, all of which this Review discusses in detail.

Terms of Reference

The Reviewers understand that the Terms of Reference for the Review were developed by the Minister for Resources and Water. These have been summarised in Figure 1 below.

Figure 1: Summary overview of Terms of Reference for the Review of the WELS Scheme



As part of considering potential improvements to the operation of the WELS Scheme, the Terms of Reference directed that the Review also consider:

- interactions between the WELS Scheme and other regulatory systems such as WaterMark, Greenhouse and Energy Minimum Standards (GEMS) and state and territory plumbing regulation including barriers that may affect the ability of new products or more water-efficient products to enter the Australian marketplace
- the appropriateness and effectiveness of current mechanisms for industry engagement on the administration of the WELS Scheme
- the appropriateness of the current cost-recovery arrangements

- administrative challenges faced by the WELS Scheme including, but not limited to, the ability to respond to shifting trends in industry, such as new and existing platforms for online sales, integrated products, technological changes, less specific product categories, and new or bespoke products
- the consistency between WELS legislation in each jurisdiction with regard to the requirements set out in parts 4 and 5 of the WELS Intergovernmental Agreement (IGA)
- the capacity and effectiveness of WELS administration with compliance monitoring, and the adequacy of funding to meet or exceed benchmark principles of regulatory practice
- how the WELS Scheme can drive improvements to the water efficiency of products and strengthen existing standards
- opportunities and implications to expand the WELS Scheme to include other water-saving products not currently in its remit
- how any expansion of products regulated under the WELS Scheme could be funded
- potential implications to the operation of the WELS Scheme with the current development of an International Organization for Standardisation Standard for rating and labelling the water efficiency of water-using products
- the evaluation of recent compliance of WELS Scheme products with the WELS Scheme
- the implementation and effectiveness of the WELS IGA between the Commonwealth and state and territory governments.

The Review is structured to address the ongoing relevance of the objectives of the WELS Scheme through consideration of its design and effectiveness in achieving these objectives and the efficiency and cost of its operations.

Method

The method used to undertake the Review involved a literature review, which contributed to findings and informed the design of interviews, surveys and the public submission paper. Although these inputs were extensive, there were some stakeholder cohorts under-represented and the sampling was purposeful rather than random, with, for example, no local council stakeholders providing input into the Review. Thus, despite the WELS Scheme's focus on consumers, the majority of input was limited to industry stakeholders (as outlined in Figure 2). There were also limited data describing household water usage and sales data to inform the size and causes of any changes in water usage or adoption of water-efficient technology. Therefore, it was not possible to attribute robustly (or not) any observed changes in water usage or adoption of water-efficient technology as a result of the WELS Scheme.

Figure 2: Data sources used to inform the Review

Data sources to inform the Review	
	Literature review that consisted of more than 100 references
	Interviews with: • the WELS Regulator (n=8) • state and territory representatives (n=21) • industry representatives (n=35; of which 7 are peak industry bodies) • consumer advocates (n=4) • relevant environmental and water associations (n=2) • similar scheme representatives (n=3) • utility company (n=1) • international stakeholders from similar schemes (n=2).
	Surveys completed by: • state and territory representatives (n=3) • industry representatives (n=26) • consumers and consumer advocates (n=6).
	Written submissions and comments provided by: • state and territory representatives (n=4) • industry representatives (n=7) • consumer advocate (n=1) • relevant environmental or water associations (n=1) • similar scheme representative (n=1) • utility company (n=1).

Main findings

Design

The Review found that the design of the WELS Scheme generally remains appropriate for achieving its objectives. WELS labelling is recognised by consumers, primarily on appliances, and is somewhat influential in purchasing decisions, although the benefits to the consumer of investing in water-efficient products are not as obvious as those in their energy-efficient equivalents.

The WELS Scheme Standard (AS/NZS 6400:2016) remains broadly appropriate. It describes the requirements for industry to comply with the WELS Scheme, interpretation of the labelling, and provides guidance and standards to industry. The new international standard (International Organization for Standardization (ISO)) will be based on the Australian WELS Scheme Standard, and is anticipated to be an example of best practice globally.

Given their interaction and complementarity, a strengthening of alignment between the WELS Scheme, WaterMark, the Equipment Energy Efficiency (E3) Program, and the National Construction Code (NCC) has been recommended by both the 2010 and 2015 Reviews of the WELS Scheme. Although there are some interdependencies between them, they are still largely managed separately and it is expected that further enhancements would flow from their increased alignment.

Effectiveness

The Review found that the WELS Scheme is effective in contributing to water efficiency and is continuing to add value by achieving its objectives under the Act. A report conducted by the Institute for Sustainable Futures in 2018 found that "the WELS Scheme and its associated measures are…currently saving significant volumes of potable water in households and businesses across Australia" (Institute for Sustainable Futures, 2018, p. 71). The report from the Institute for Sustainable Futures considered measures that are associated with the WELS Scheme in its modelling. It is therefore difficult to ascertain the full extent to which a reduction in water consumption can be solely attributed to the Scheme.

Further, the Scheme should also be considered in its broader context including alongside its contribution when compared to the overall changes brought about by multiple water-saving initiatives, prevailing droughts and floods, and the contribution of household product savings compared to other influences such as building designs and consumer use of household products. Whilst a focus of the WELS Scheme is on household water consumption, it is also important to note that agricultural and commercial water use are also significant consumers of water. Notwithstanding this important context, the findings from the report conducted by the Institute for Sustainable Futures of the savings made by the WELS Scheme and its associated measures including that "it is currently saving 12.4L per person per day across Australia" are testament to the effectiveness of the Scheme.

Areas where the WELS Scheme's effectiveness could be improved include:

- designing the WELS Scheme and the WELS Standard to streamline the contributions they make
- strengthening the promotion of water-saving products and water efficiency through communication, particularly to consumers
- understanding the relative impact of advertising initiatives to support consumers using less water, compared to product registrations.

Efficiency and Cost

The Review found that the WELS Scheme, and in particular the WELS Regulator, are managing outcomes, priorities and stakeholder relationships which support efficient regulatory practice. In terms of operational efficiency, there are elements of WELS administration that operate more efficiently than others. The WELS Act and supporting documentation, for example, are very clear about the objectives of the WELS Scheme, and stakeholders are generally well engaged through the industry WELS Advisory Group (WELSAG), the WELS Officials Group (WELSOG) and other forms of communication. This is critical to supporting a clear understanding of the objectives of the regulatory regime thereby improving efficiency. However, the lack of data available from the current registration systems leaves a gap in understanding how efficiently processes operate; for example processing times for registration and feedback to industry queries. The Review concluded that it was difficult to attribute water efficiency benefits solely to the WELS Scheme without further economic evaluation.

The current Information and Communications Technology (ICT) project upgrade being implemented by the WELS Regulator promises great improvement in internal efficiencies and transparency of performance metrics. It also brings significant opportunities to redesign processes and achieve improvements rather than to carry over existing process issues into a new management tool.

Areas where efficiency and cost improvements could be made include:

- improving the efficiency of the WELS Scheme, and in particular the WELS Regulator, by taking a risk-based approach to regulatory administration
- strengthening systems of communication with industry, including incorporating WELS technical requirements into industry training programs, such as apprenticeships and qualifications
- alignment of compliance inspection mechanisms across schemes
- the WELS Regulator institutionalising the use of data-driven decisions more widely, with timely information on real-time performance
- making significant enhancements to reduce the cost recovery split between industry and government, which does not appear to be meeting industry expectations.

Conclusion and Recommendations

Overall, the WELS Scheme has continued to mature since 2015. This Review supports it being retained in light of its success in meeting its objectives. The majority of stakeholders interviewed considered that the objectives of the WELS Scheme remained appropriate in the context of current government and market needs. There are, however, several opportunities for improvement to ensure that the WELS Scheme continues to achieve gains in water efficiency in a rapidly evolving environment. The conclusions and recommendations of the Review are grouped thematically as follows:

1. Improvements that will support the WELS Scheme to remain relevant and effective for industry and consumers.
2. Improvements that will more effectively reduce water consumption and inform purchasers on water-saving products.
3. Improvements that will seek to strengthen the effectiveness and efficiency of the WELS Regulator, particularly around registration and compliance.

Figure 3: List of recommended improvements

1 - Improvements that will support the WELS Scheme to remain relevant and effective for industry and consumers

Recommendation 1.1: Continue to be alert to, and actively research, industry and environmental changes

- This includes further research relating to:
  - consumer behaviour in purchasing higher rated products and how the consumer use of products might influence water usage
  - the value of the WELS Scheme to consumers in their product choices
  - the influence that the WELS Scheme is having on product design
  - the economic and non-financial benefits of the WELS Scheme, including the development of indicators that the WELS Regulator can incorporate into operational practice.

1 - Improvements that will support the WELS Scheme to remain relevant and effective for industry and consumers

Recommendation 1.2: Develop a framework which will prioritise a product range that is most likely to impact on the WELS Scheme achieving its objectives in reducing water consumption

- This includes developing a framework upon which modifications to the product range can be determined factoring in research undertaken, the size of the market and the extent of market competition.

  The Framework should be:

- validated by WELSAG and consumer groups
- applied across all current and potential products so the WELS Scheme can help to prioritise products for testing, registration and compliance
- applied so as to contribute to the ongoing assessment of minimum standards
- developed alongside a business case template in which the cost of onboarding new products to the WELS Scheme (including revisions to the WELS Standard, consultation, education and label design) can be assessed against the estimated benefit of their inclusion and the proposed income likely from their registration.

- This includes reviewing the product range and considering whether products need to be added (including emerging technology such as programmable showers) or whether they could be removed (particularly if their water efficiency depends on the time for which they are used, or if their WELS label is not always visible at point of sale including, for example, shower heads and taps).

1 - Improvements that will support the WELS Scheme to remain relevant and effective for industry and consumers

Recommendation 1.3: Continue to strengthen interactions between the WELS Scheme, E3, WaterMark and the NCC to build consistency of approach and clarity for industry

- This includes exploring preliminary options for alignment between WELS and E3 through:
  - researching the economic and non-financial benefits of the WELS Scheme, including the development of indicators that the WELS Regulator can incorporate into operational practice
  - developing joint communications materials that compare water and energy efficiency of products side-by-side.
- This includes working with WaterMark to align sampling and other testing requirements to remove inconsistency; and working with state and territory jurisdictions to enable sharing of information between WELS Scheme and WaterMark compliance inspectors.
- This includes exploring options with states and territories and the ABCB to extend the integration of the WELS Scheme into the building requirements of the NCC; engaging closely with the committee to ensure the WELS Scheme and plumbing requirements of the NCC complement each other.
- For plumbing products, this includes exploring options for alignment between the WELS Scheme and WaterMark, including streamlining registration processes and joint compliance activities
- For appliances, this includes exploring options for alignment between the WELS Scheme and E3 including:
  - streamlining registration processes to minimise repetition for industry, including whether the pending ICT project upgrade could be an opportunity to introduce some inter-operability between the registration processes and the development of a shared database
  - aligning the testing and sampling strategies
  - combining compliance activities
  - incorporating the regulation of E3 and the WELS Scheme within the same government department to streamline efficiencies.

1 - Improvements that will support the WELS Scheme to remain relevant and effective for industry and consumers

Recommendation 1.4: Work with Standards Australia to clarify and simplify testing regimes

- This includes modifying testing and standards to address the limitations of testing flow controllers separately from taps and shower heads, as well as in assemblies that can subsequently be dismantled.

2 - Improvements that will more effectively reduce water consumption and inform purchasers on water-saving products

Recommendation 2.1: Strengthen the water conservation message with consumers utilising partnerships with other water conservation groups, local and state/territory governments and water utilities and enhance education about the WELS Scheme

- This includes designing and implementing projects in conjunction with other departments and agencies whose aim is to reduce water consumption. This may include cooperation on communications around smart structural designs to minimise water consumption, such as the location of hot water services within homes or the impact that home design could have on the water efficiency of products within the scope of the WELS Scheme.
- This includes supporting dissemination of education to industry and consumers in relation to the benefits that come from flow controllers so as to address issues or concerns around performance expectations and to prevent their removal at point of installation.
- This includes increasing education with industry to address misconceptions around testing cycles, aligning risk-based compliance planning, and enforcing consistent and complete product labelling coverage in stores, by encouraging industry to provide links to the WELS Scheme on their websites and support compliance at point of installation.

2 - Improvements that will more effectively reduce water consumption and inform purchasers on water-saving products

Recommendation 2.2: Modify product labelling

- This includes consideration of product labelling which seeks to incorporate increasingly efficient products.
- This includes considering research and consumer testing of label designs with diverse cohorts and supporting the development of communication collateral to expand the reach of the WELS Scheme to people from diverse communities, particularly where English is not their first language or where literacy levels are low.
- This includes considering label modifications which:
  - include the setting on which the testing took place
  - identify the most water-efficient setting or program (for washing machines and dishwashers) if this differs from the setting that was used for testing
  - include load capacity.

2 - Improvements that will more effectively reduce water consumption and inform purchasers on water-saving products

Recommendation 2.3: Continue to set minimum star ratings in conjunction with NCC

- This includes consideration of the need to represent more efficient products with more granularity, perhaps with incremental stars, normalised rating system or resetting the minimum star performance levels.

3 - Improvements that will seek to strengthen the effectiveness and efficiency of the WELS Regulator, particularly around registration and compliance

Recommendation 3.1: Continue to build communication and education with industry, including annual compliance communications, and clarification of areas driving issues with registration and testing

- This includes enhancing communications with industry (including online retailers) by:
  - supporting engagement between the WELS Regulator and industry through virtual teleconferencing, phone and email
  - supporting industry to report technological innovation back to the WELS Regulator
  - supporting industry to understand the technical requirements of the WELS Scheme, including in relation to alignment between E3 and WELS testing.
- This includes improving the waterrating.gov.au website including the product database and the search function therein.

3 - Improvements that will seek to strengthen the effectiveness and efficiency of the WELS Regulator, particularly around registration and compliance

Recommendation 3.2: Align processes with E3 for appliances and WaterMark for plumbing products to reduce the burden on industry, including a reduction in both the duplication of processes, which can lead to delays, and of cost

- This includes combining E3 and WELS labels across the range of WELS products and establishing a single Regulator across the E3 and WELS Schemes.

3 - Improvements that will seek to strengthen the effectiveness and efficiency of the WELS Regulator, particularly around registration and compliance

Recommendation 3.3: Drive continuous improvement in reviewing the star-rating system, streamlining and strengthening registration practices and reducing non-compliance

- This includes regulating to ensure that industry advertises all WELS Scheme rated products alongside their star ratings at point-of-sale (whether in physical premises or online).
- This includes operationalising monitoring regimes (including KPIs, reflections and improvement targets) to understand internal process bottlenecks and issues, as well as the external effectiveness of the WELS Scheme in achieving its objectives, and to capture baseline data relating to these prior to the implementation of the ICT project upgrade.
- This includes finalising the Compliance and Enforcement Strategy for 2021–2024, including institutionalising risk-based workplans for compliance in line with education and data strategies, with a framework upon which to base planning.
- This includes developing an annual workplan that is published on the waterrating.gov.au website, which highlights areas of priority.
- This includes continuing to work collaboratively to design the ICT project upgrade in support of revised processes, and to provide transparency and functionality that can horizontally and vertically scale the scope of the WELS Regulator by allowing for expansions or retractions in the number and type of products.
- This includes supporting compliance and enforcement by:
  - working with state and territory jurisdictions to enable sharing of information between compliance inspectors for the WELS Scheme and WaterMark
  - moving enforcement provisions to the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) when the WELS Act is next updated so as to facilitate consistency and clarity.
- This includes clarifying discretionary language in the WELS Standard where discretion means interpretations may differ among WELS Regulator staff.
- This includes reviewing changes in water consumption in the higher rated products and adopting a normalised star rating to accommodate increasingly efficient appliances and plumbing, with the top 10% of products receiving the highest star rating. This recommended improvement must be considered in the prevailing context and the star rating should be aligned with the ISO Standard when developed if it details this level of requirement. Consideration of how this could be implemented practically requires further analysis as constant reclassification and relabelling of stock is not practical.
- This includes considering the incorporation of a risk-based or value-based approach by only requiring testing and registering of those products and variants of products most likely to affect water consumption, and base testing sampling on that utilised by CAB/WaterMark/E3. Concentrate on products where: discretionary use by households is minimised (where the water used by a product influences water use more than the person or system using it) and the testing cycles and products represent consumer-changing usage patterns.
- This includes institutionalising risk-based workplans for compliance in line with education and data strategies, with a framework for forward planning.
- This includes amending registration practices
  - by allowing industry to register products within the WELS Scheme annually, 5-yearly or 10-yearly with the latter registration being the most expensive option; this recommendation reflects the static nature of most product designs and incentivises innovation by supporting yearly registration as the most cost-effective option
    by streamlining the current two-step process for registering product variations.

3 Improvements that will seek to strengthen the effectiveness and efficiency of the WELS Regulator, particularly around registration and compliance

Recommendation 3.4: Develop and implement a model that can review fee structures annually based on expenditure and income

- This includes monitoring and modifying the cost-recovery model by:
  - embedding the practice of ongoing monitoring of the economic and non-financial benefits of the WELS Scheme, including the development of outputs, and suggesting ongoing indicators that the WELS Regulator can incorporate within its operations
  - developing a mechanism to enable adjustments to the funding model based on costs budgeted, particularly as efficiencies in the ICT project upgrade and other areas are incorporated
  - incorporating real-time monitoring of registration fee income against budget with the ability to reforecast and adapt if required
  - reviewing the tiered fee model so that small registrant businesses are not disproportionately charged.
- This includes modifying the cost-recovery model to reflect beneficiary mapping and incorporate expected efficiencies that will likely be made with the introduction of the ICT project upgrade. This includes considering an equally divided 50% cost recovery split between government and industry (noting that this may be impacted depending on alignment with other schemes and the number of products within scope for the WELS Scheme). The final funding formula should be developed through consultation with industry.

1 INTRODUCTION

The WELS Scheme was established in 2005 as a national instrument for encouraging more efficient domestic water use, and reducing demand for potable water by informing consumers about water efficiency at the point of sale. It requires specified products to be registered and labelled with their water efficiency in accordance with the standard set under the WELS Act. The WELS Act is supported by relevant subordinate legislation including the *WELS Regulations 2005* as well as complementary legislation in all states and territories. The WELS Scheme is administered by the Department of Agriculture, Water and the Environment (the Department), which has oversight of Australia's water resources.

The objectives of the WELS Act are:

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

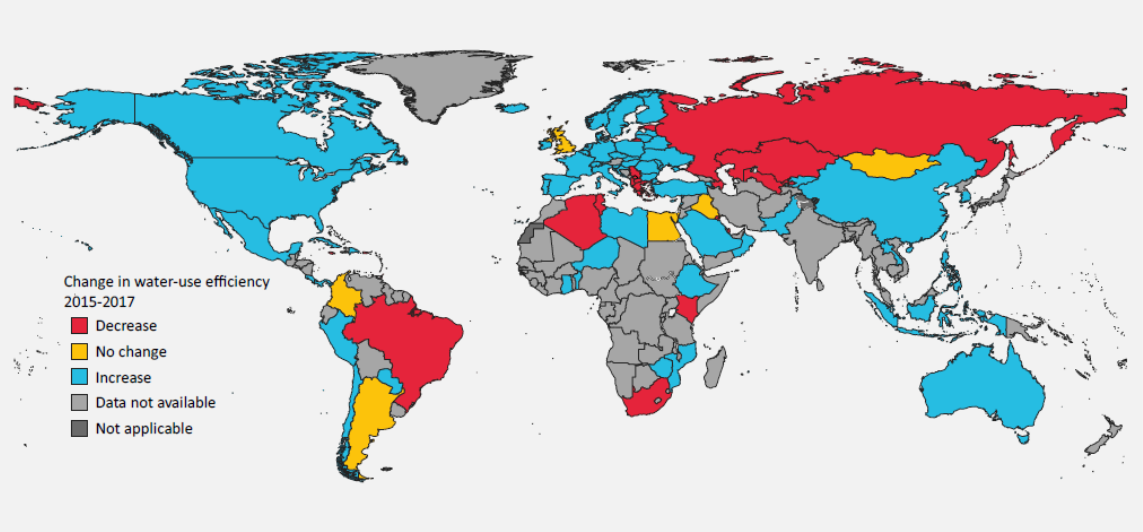
1.1 Context for the WELS Scheme

The WELS Scheme operates in an evolving environment, with climate change and growing demands on water usage increasing the need across Australia to conserve water.

The WELS Scheme has successfully accommodated shifting trends in industry – including changes to technology, products and purchasing methods. The Institute for Sustainable Futures has outlined that 'the change in context has seen plumbing fixture and appliance markets transformed; large scale demand management programs run, thus incentivising more efficient product and minimum water efficient standards on products' (Institute for Sustainable Futures, 2018, p. 11).

As outlined in Figure 4, Australia has seen an increase in water-use efficiency between 2015–17, when compared to many other jurisdictions.

Figure 4: Global change in water-use efficiency 2015–17



Source: UN Water, Summary progress update 2021 – Water and Sanitation for All (Data available for 88 countries)

The WELS Scheme also needs to interact with other regulatory systems and schemes, such as WaterMark, as it sets out to achieve its stated purpose and objectives. The WELS label, for example, operates alongside a range of other ecolabels, standards and certifications used across Australia, many of which seek to support environmental protection and sustainability. There is also an expectation that the WELS Scheme aligns with international standards, such as the ISO Standard (International Organization for Standardization, 2018) for rating and labelling the water efficiency of water-using products that is currently being developed.

1.2 Operation of the WELS Scheme

The WELS Regulator is established under s. 21 of the WELS Act and is responsible for the administration of the WELS Scheme. The Australian Government administers the WELS Scheme on behalf of all state and territory governments on a cooperative basis under an IGA.

To be legally supplied, a WELS product must meet the performance and testing requirements of the WELS Standard, and be registered and labelled correctly.

A water-use product or water-saving product of any of the following kinds is a WELS product (as determined by s. 6 of the Water Efficiency Labelling and Standards Determination 2013 (No.2)):

- tap equipment for use over a fixed basin, sink or laundry tub (excluding tap equipment for use over a bath or spa, thermostatic taps, bidet taps, taps that are part of an application (such as a chilled or boiling water dispenser)
- fixed showers that are for use exclusively for personal bathing (excluding emergency deluge showers, safety showers)
- electric dishwashers intended for household use
- electric clothes washing machines that are intended for household use (including cold wash only and combination clothes washing machine dryers)
- lavatory equipment that uses water, including toilets, cisterns, pans and associated flushing devices
- urinal equipment that uses water, including associated flushing devices
- flow controllers that are for use in a product that is a WELS product and offered for supply separately from the product (whether or not they are also offered for supply as a component of the product).

1.3 Independent review of the WELS Scheme

An independent review of the operation of the WELS Scheme is required every five years under s. 76 of the WELS Act, with previous reviews undertaken in 2010 and 2015. Reviews are managed by the Department.

This Review is the third since the WELS Scheme was established and, where reasonable, the Review aligns its lines of inquiry with those used previously and builds on the 2015 Review.

This Review considers the WELS Scheme through the lens of:

Design

Effectiveness

Efficiency + Cost

The conclusions and recommendations seek to improve the design, effectiveness and efficiency and cost of the WELS Scheme.

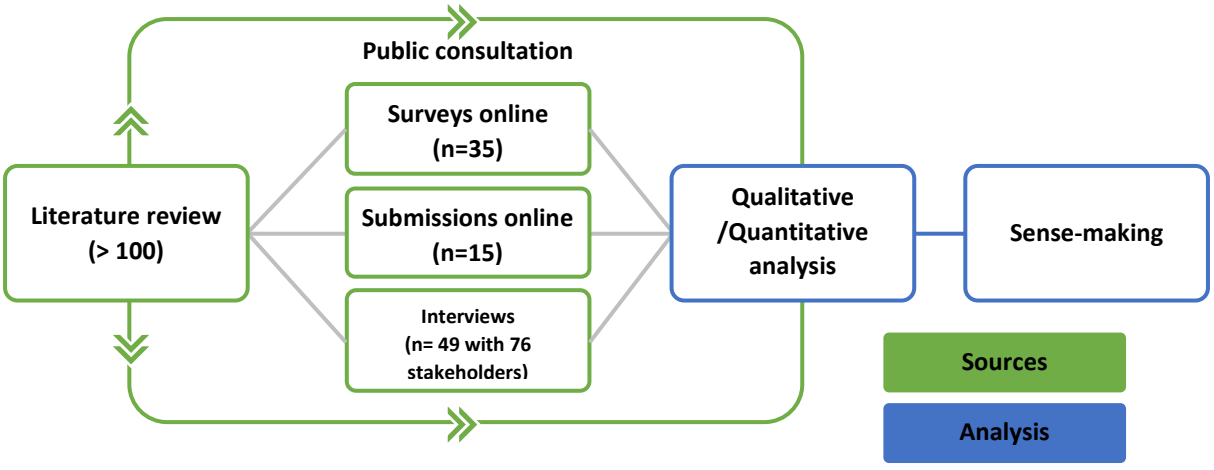
2 REVIEW METHODOLOGY

The Review considered the ongoing relevance of the WELS Scheme, its effectiveness in achieving legislated objectives and its administrative efficiencies and costs. It also sought to identify gaps and potential improvements to the WELS Scheme that would better support its objectives. To do this, the Review considered key questions within a context that was informed by a literature review and stakeholder engagement, with feedback collected through online submissions against questions set out in a Discussion Paper.

The literature review was developed and expanded to incorporate input from more than 100 written sources of information, some public documents and others provided by the WELS Regulator. It contributed findings and informed the public consultation phase that was carried out through online submissions and surveys and a series of interviews – all across multiple stakeholder cohorts including government, staff of the WELS Regulator, consumers, similar schemes and industry. A stakeholder list is provided in Appendix 2: List of stakeholders consulted on this Review (see Appendix 2 of Part A).

Data was consolidated in line with the Review questions and along key themes as they emerged. However, statistical analysis was not possible because the survey data sample size was small and not representative of a random population sample. The Review's analysis was able to draw out where data sources reinforced and conflicted in their findings and to identify where this was more or less pronounced across stakeholder cohorts.

Figure 5: Overview of Review methodology



To assess how well the WELS Scheme addresses each of the areas in the Review, high-level assessment criteria were developed that combined relevant Regulator standards, such as the Better Practice Guide-based framework (Australian National Audit Office, 2014), with the Regulator Performance Framework.

The assessment criteria were developed for the three key themes of the Review – Design, Effectiveness, and Efficiency and Cost – by identifying relevant assessment elements for each theme. These were drawn from a combination of the Terms of Reference for the Review and broader government guidance. The WELS Scheme and the WELS Act fit within a broad framework of principles including the *Regulator Performance Framework* (the Framework) (Australian Government, 2014), and *The Australian Government Guide to Regulation* (Department of Prime

Minister and Cabinet 2014). As such, the Review's assessment criteria also used elements of the maturity rating model from this framework (Australian Government, 2014), and adapted its 'Requirement' section to include specific criteria for each of the three themes.

Components of the assessment criteria have been used in regular self-assessments by the Department and its predecessor organisations (Department of Agriculture, Water and the Environment, 2019). They are also useful in their ability to reflect room for improvement on a more dynamic scale. Thus, for the three themes – Design, Effectiveness, Efficiency and Cost – a WELS Scheme-relevant 'requirement' description was developed for each maturity rating.

The data collected during the Review were then synthesised and assessed against these elements, and gaps and opportunities for improvement identified.

Table 1: Regulator maturity rating

Maturity rating	Requirement
Optimal	Comprehensive regulatory systems and processes Demonstrated achievement
Managed	Comprehensive regulatory systems and processes Minor achievement issues Corrective action in place
Sound	Sound regulatory systems and processes Some achievement issues or limitations in assessing Regulator performance
In transition	Limited regulatory systems and processes Significant achievement issues and/or limitations in assessing Regulator performance
Not meeting expectations	Regulatory systems and processes highly limited Performance not assessed or limited

3 SOURCES USED TO UNDERTAKE THE REVIEW

The Review drew on the following sources:

- a literature review of more than 100 references
- 49 interviews with 76 stakeholders
- survey responses from 35 stakeholders
- submissions and/or additional comments from 15 stakeholders
- other relevant data provided by the Department.

The literature review considered the design, effectiveness and efficiency of the WELS Scheme in achieving its objectives. Forty-nine interviews with 76 stakeholders were held between 27 January and 17 March 2021. These interviews were conducted with: the WELS Regulator, state and territory government policy-makers, industry representatives, consumer and consumer advocates, and representatives from relevant environmental and water associations', and similar schemes, utility companies and the New Zealand government department administering the WELS Scheme. The full list of organisations that participated in the consultation period for this Review – via interviews, surveys and/or providing submissions or additional comments – can be found in Appendix 2: List of stakeholders consulted on this review.

Figure 6 provides an overview of the stakeholders consulted for this Review.

Figure 6: Overview of stakeholder consultation

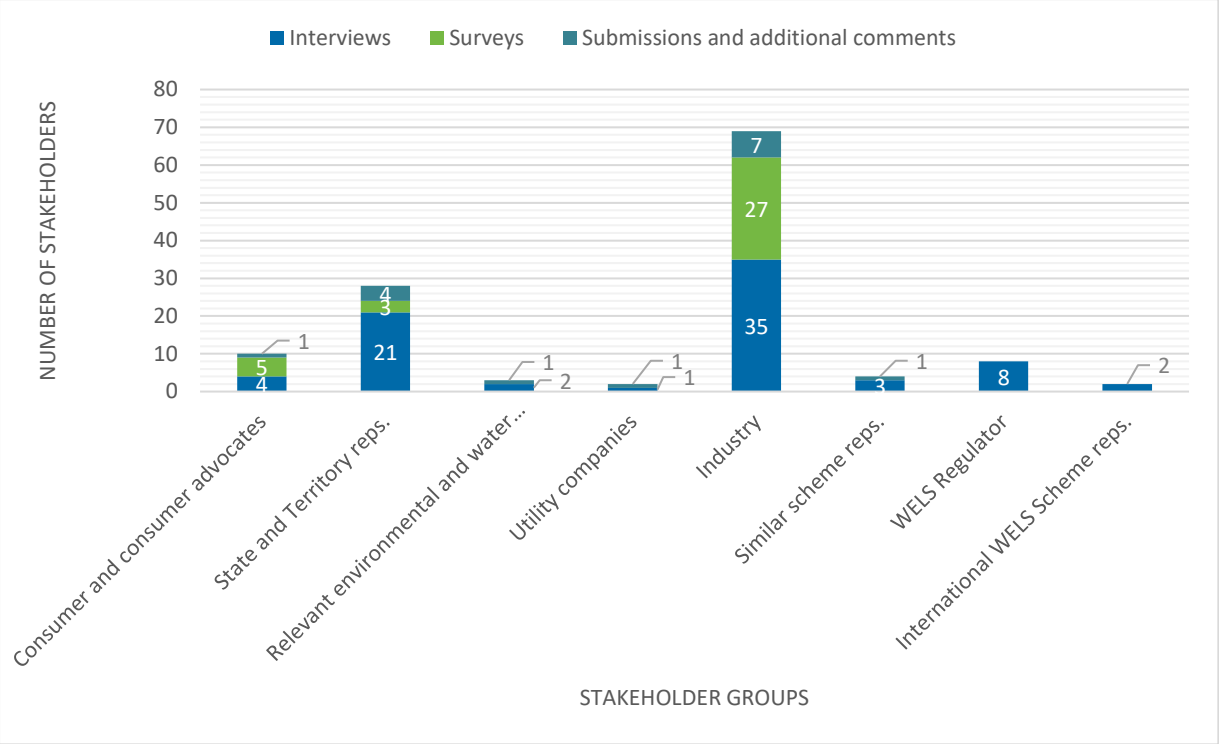
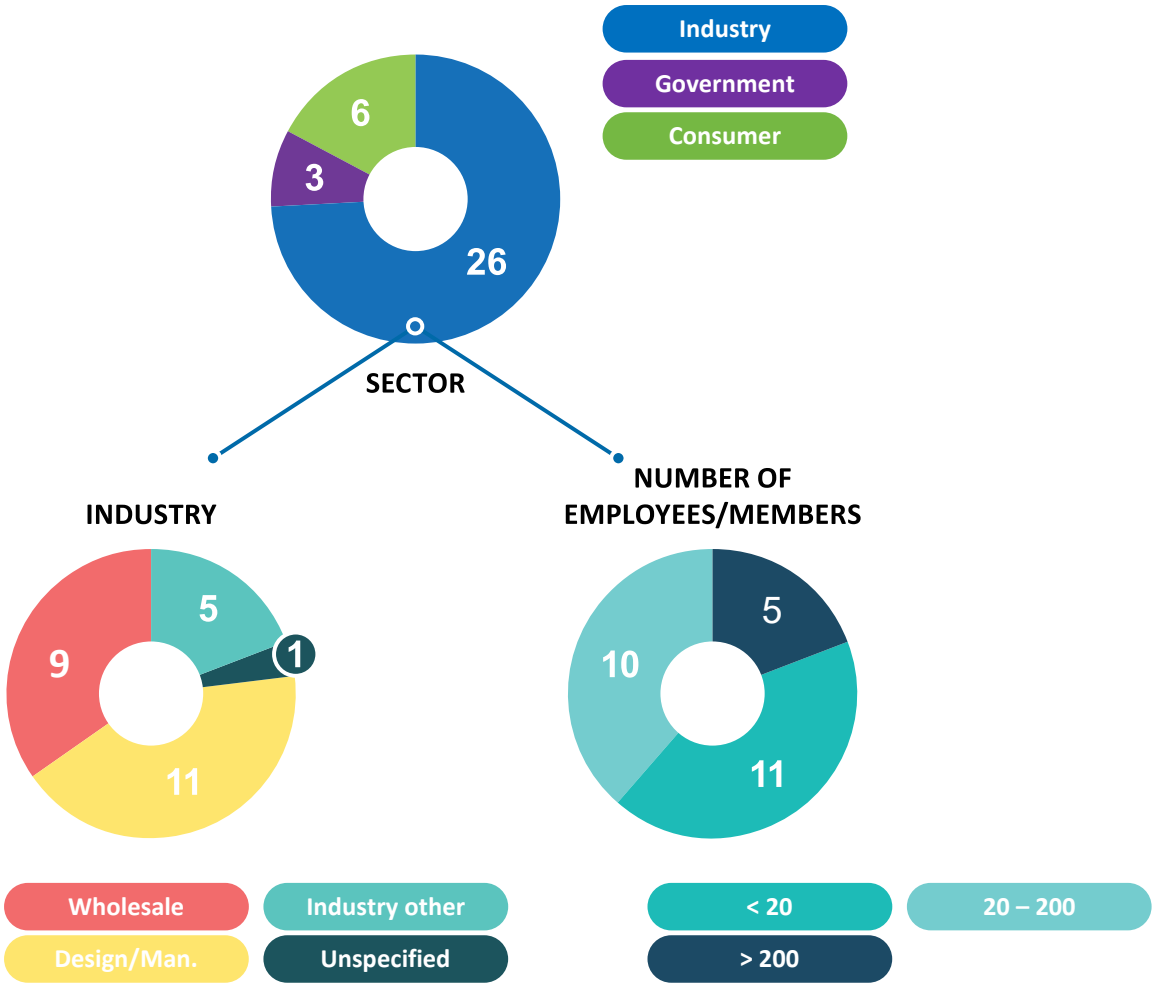


Figure 7 provides an overview of the survey response cohorts, broken down to the type (or sub-categories) and number of employees or members, of the 26 industry representatives who completed the survey.

Figure 7: Survey response cohort, with industry breakdown (n=35, of which total industry=26)

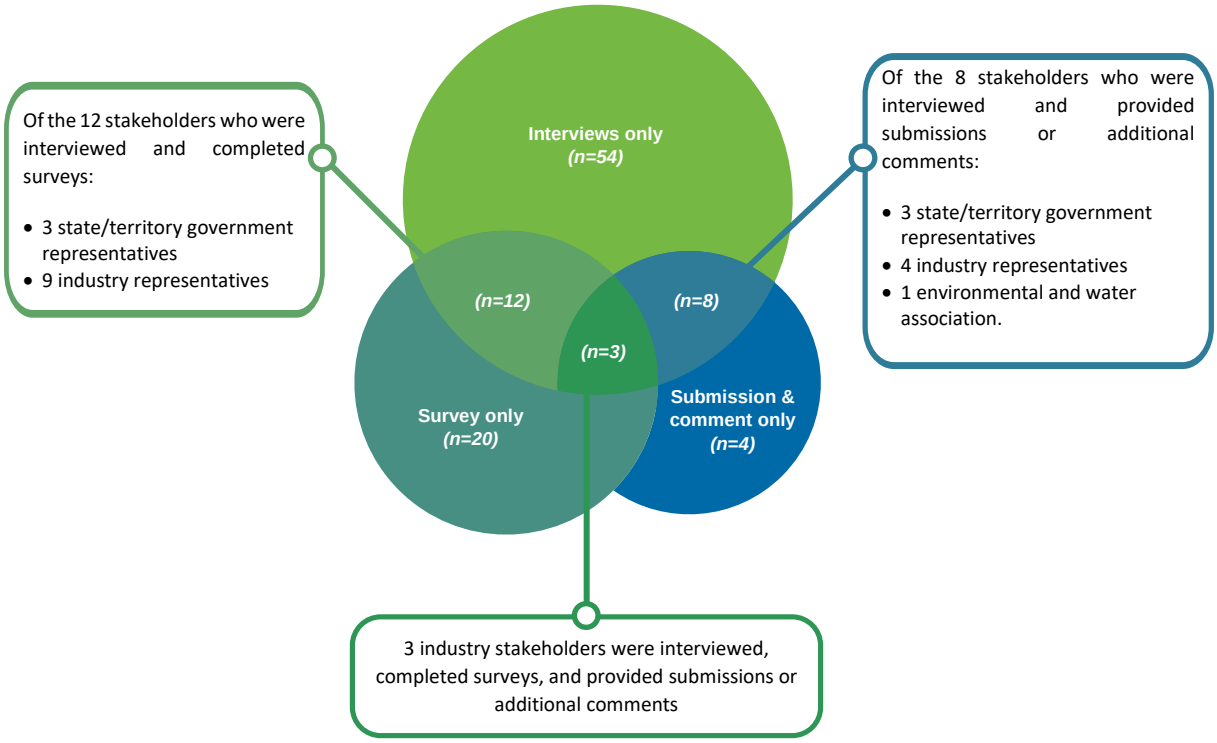


4 LIMITATIONS

4.1 Duplication of interview and survey responses

As outlined in Figure 8, a range of stakeholders were offered an opportunity to consult in multiple forms: survey responses, submissions and interviews. Three stakeholders contributed to all consultation forms and 21 stakeholders participated in two consultation forms. As intended, the semi-structured interviews were able to add depth and explanation to the survey results. However, due to the nature of the more open questioning, it is not statistically valid to add interview responses to similar responses from the survey. However, the various sources have been able to reinforce the findings and give richness to the survey conclusions. Where multiple inputs were received from the same stakeholder, care was taken not to double count. The extent to which those participants represented their cohort cannot always be gauged, except for those from state and territory governments where all but one was consulted.

Figure 8: Overlap of stakeholder engagement



4.2 Internal data sources, potential bias

All interviewed stakeholders were nominated and/or approved by the WELS Regulator. While this may be appropriate for a formative review, it raises the potential for bias in the data collected. This risk was mitigated by the mix of stakeholder cohorts consulted, and triangulation of data from multiple sources. For instance, the efficiency of the WELS Regulator was explored in interviews with the Regulator itself, with industry representatives and other government staff.

4.3 Negative bias with public consultation

By its nature, the ability to provide feedback anonymously is often more likely to be negative than positive. This limitation has been considered in all interpretations of inputs, and accepting and implementing any recommendations would require further development.

4.4 Stakeholder data limitations limited perspectives

Consumers are one of the main beneficiaries of the WELS Scheme, but their input to this Review was limited. There were seven consumer survey responses, and one consumer group was interviewed and made a written submission. Local council representatives (no data) and international stakeholders (one group interviewed) were also underrepresented in data collection. This limited the Review's ability to assess consumer views compared to more vocal groups, such as industry.

4.5 Attribution of water consumption influence is difficult

With multiple factors affecting water consumption – similar campaigns, the impact of droughts, the influence of aesthetics, price and availability on product choice – it was difficult to attribute results directly to the WELS Scheme. For this reason, conclusions on the effectiveness of the WELS Scheme in reducing water consumption and influencing consumer choice are not categoric. This is noted in relevant Sections.

4.6 Low survey and submission numbers limited statistical analysis

The sample size of responses was low. This limited the ability to draw statistically significant conclusions, particularly from disaggregated sub-cohorts, such as industry types. The inputs did, however, give an indication of how different cohorts may respond, with sample sizes cited to identify this limitation. Recommended improvements are drawn from survey and submissions responses, triangulated against literature.

4.7 Quotations from interviews

While audio and written recordings were made of most interviews, quotes have not been cross-checked with relevant stakeholders prior to inclusion in this Review. Accordingly, they may not always be verbatim quotes as they have not been validated with the stakeholders interviewed.

4.8 Rounding outcomes on charts

Some graphs in this report equal more or less than 100% due to the rounding of data input.

4.9 Estimate of business size

The disaggregation of business based on employee numbers is not validated through the use of external sources and has not been declared to the WELS Regulator. Sources here are from inputs from business representatives and from research into the business itself from publicly available information.

KEY FINDINGS:

DESIGN

5 KEY FINDINGS

5.1 Design

The WELS Scheme has had a significant impact since its establishment in the following ways:

- water savings increased across Australia, particularly in urban areas
- industry began testing and labelling products
- manufacturers were encouraged to develop more water-efficient products
- consumers were empowered with a nationally consistent regime on which to guide their own purchasing behaviour.

The guiding question for this Section of the Review, then, is how to define the extent to which the objectives and overall design of the WELS Scheme continue to be appropriate.

To answer this, seven key questions are addressed:

1. Do the objectives of the WELS Scheme remain appropriate?
2. Is the current suite of products covered by the WELS Scheme appropriate?
3. Is the current WELS Standard still appropriate?
4. What are the implications to the WELS Scheme from an equivalent ISO Standard?
5. Does the WELS Scheme continue to be used as an eligibility requirement for other rebate or subsidy programs and, if so, for what purpose? Does this use contribute to the WELS Scheme meeting its objectives?
6. How well does the WELS Scheme complement and interact with other schemes?
7. How consistent is the WELS Scheme across state and territory regulations?

This Section summarises the evidence gathered for each of these questions and draws out key themes and recommendations. The assessment criteria used to assess the design of the WELS Scheme is explained at 5.1.8 below. Note that these findings should be read in the context of the limitations from the previous Section. Conclusions have only been drawn where the feedback was consistent and validated from multiple sources.

5.1.1 Do the objectives of the WELS Scheme remain appropriate?

The objectives of the WELS Scheme are:

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

The Review considers whether the design of the WELS Scheme aligns with its objectives as outlined in the WELS Act. When asked in 2020 about the appropriateness of these objectives, 33% of government representatives indicated that they were highly appropriate with no changes required and 67% indicated that they were highly appropriate with minor changes required. They also considered that the WELS Scheme will remain necessary given ongoing extreme weather conditions and the need to continue to use water efficiently to address water security.

> *The WELS Scheme is seen as a way to make a significant impact on water use at a low cost to consumers and the industry.* [Industry stakeholder]

By contrast, industry representatives (from the design or manufacturing industries), along with consumers and consumer advocacy groups, were less positive when describing the appropriateness of the WELS Scheme. The majority of designer, manufacturer, wholesaler or retailer industry representatives responded that the objectives were mostly appropriate with some changes required, or were not or no longer appropriate. Other industry representatives were mainly split between viewing the objectives as highly appropriate with minor changes and mostly appropriate with some changes. Three of the 20 industry representatives had no opinion or did not know how appropriate the objectives of the WELS Scheme were.

An overview of survey responses in relation to the appropriateness of the objectives of the WELS Scheme is provided in Figure 9. Of these 29 responses, three were from state and territory government representatives, six from consumers and one from a consumer advocacy group. Half of this combined cohort considered the objectives of the WELS Scheme as being not appropriate or no longer appropriate.

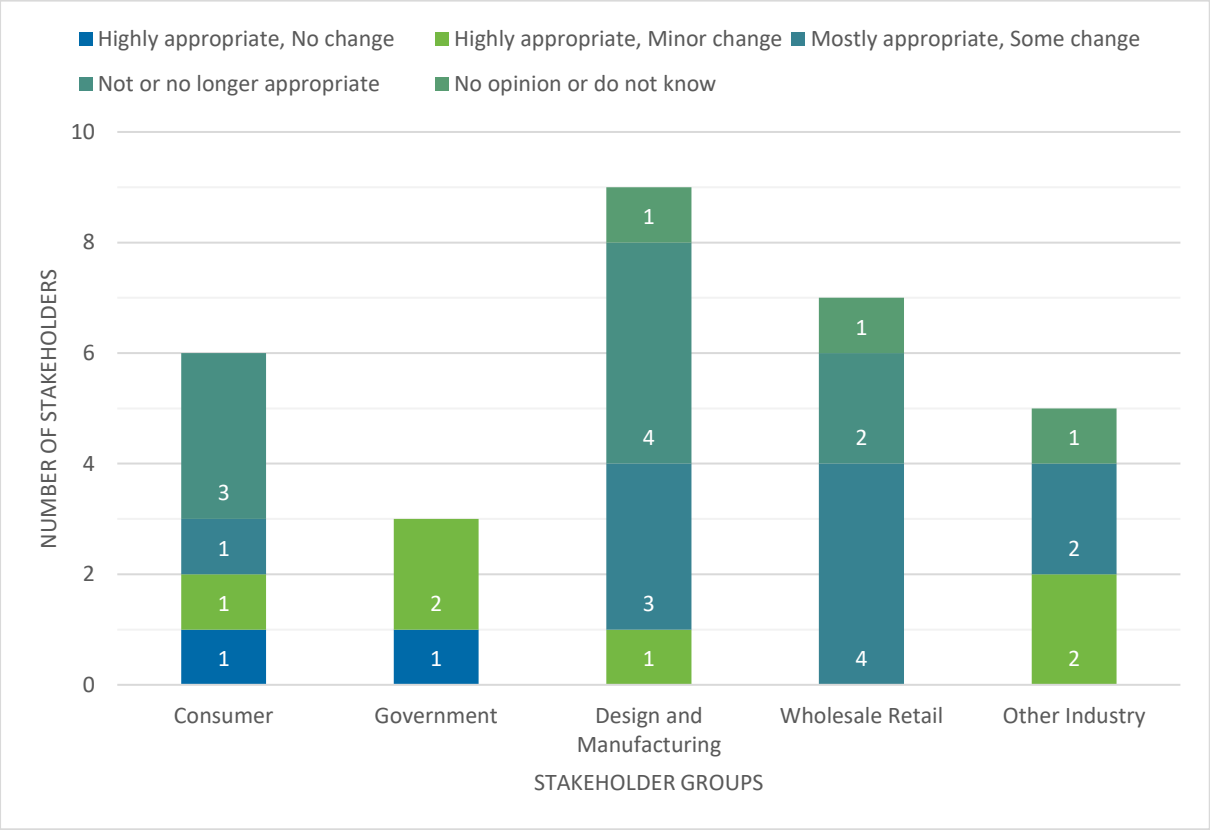
> *WELS needs to go further and prohibit the sale of one- and two-star products. WELS also needs to reach CALD communities and have mandated minimums in all states in tenancy acts.* [Consumer stakeholder]

The other consumer survey responses evenly responded that the objectives were highly or mostly appropriate with no, minor or some changes. Note that this cannot be considered statistically significant, particularly as some who identified as consumers on the survey appeared to also be industry representatives. Further, consumer information through detailed surveys and use of market information, like that available through the Australian Consumers' Association magazine CHOICE, is more representative.

When stakeholders who responded to the survey were asked to consider how appropriate the objectives remained in 2020, their answers appeared to be influenced by the number of employees or members in their organisation. Of the 22 stakeholders who responded to these questions, 10 belonged to organisations with less than 20 employees or members, eight to organisations with between 20 and 200 employees or members, and four to organisations with more than 200 employees or members.

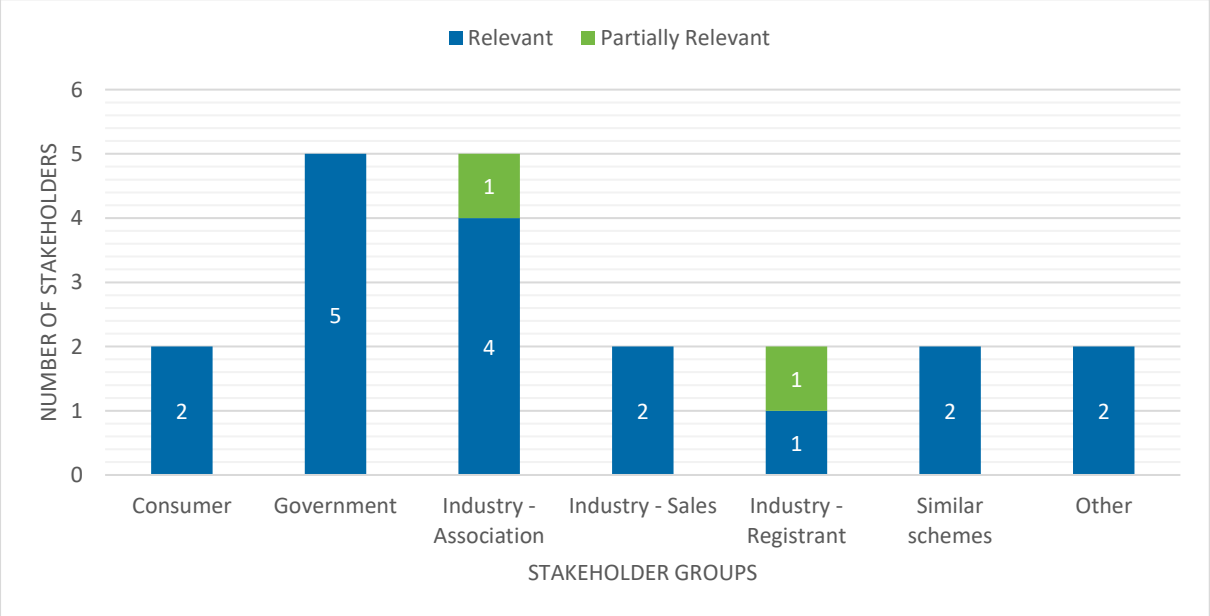
Stakeholders from organisations with fewer than 20 people expressed that the objectives were either mostly appropriate requiring some change, or not or no longer appropriate. More than a third of stakeholders from organisations with 20 to 200 employees or members felt that the objectives were highly appropriate requiring minor change, while 50% (4 of the 8) considered them either to be mostly appropriate with some change required or no longer appropriate. Stakeholders from organisations with more than 200 employees or members were evenly split between responding that the objectives were mostly appropriate requiring some change, and having no opinion or not knowing how to respond.

Figure 9: Survey findings – Appropriateness of WELS Scheme's objectives in 2020, by stakeholder group (n=29)



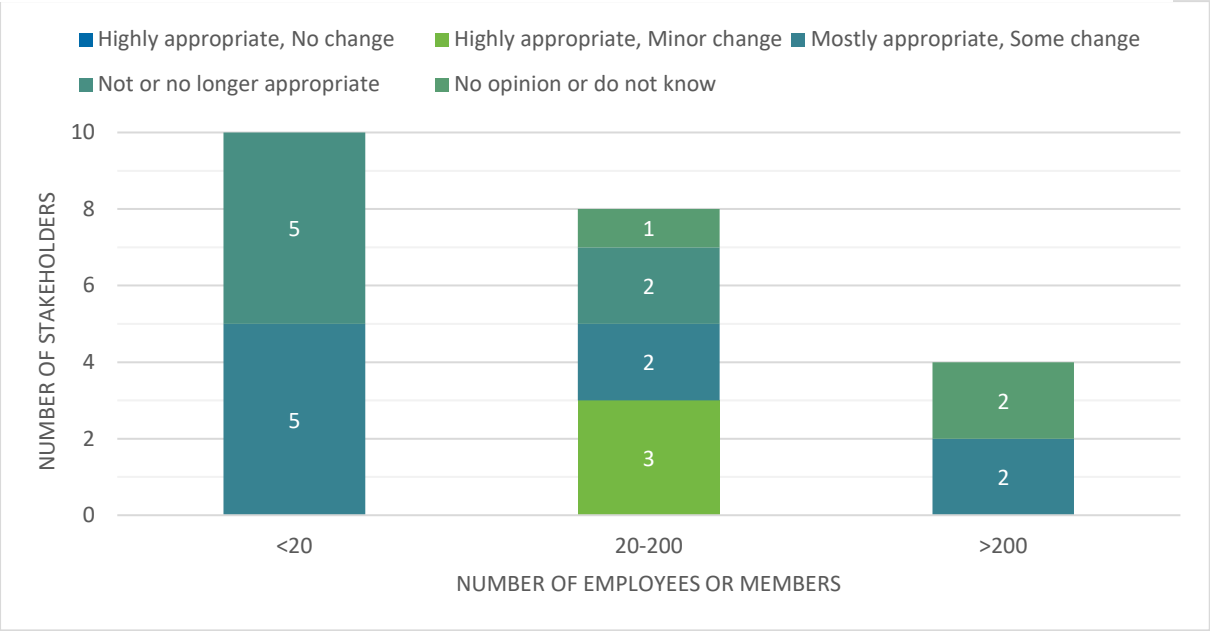
Note: Consumer cohort includes one consumer advocate; Design and Manufacture are WELS registrants

Figure 10: Interview and submission findings – Relevance of WELS Scheme's objectives in 2020, by stakeholder group (n=20)



Note: Number of employees or members is derived from survey/submission response or publicly available data

Figure 11: Survey findings – Appropriateness of WELS Scheme's objectives in 2020, by number of employees or members (n=22)



Cumulatively, the majority of stakeholders interviewed, and those who provided submissions, viewed the WELS Scheme's objectives as still being relevant in 2020 (see Figure 11). Two industry representatives perceived the objectives of the WELS Scheme to remain partially relevant in 2020.

This Section shows that, based on stakeholder consultation and a review of the literature, and under the limitations of the data sampling as described in Section 4, there is some evidence that the objectives of the WELS Scheme remain appropriate in the current context. Market research relating to the WELS Scheme indicates that when asked if water-saving is important, a majority of consumers (65%) indicated they were 'very conscious of water-saving', while 30% indicated they were 'aware of trying to save water, but were not that careful'. Not one consumer indicated that they believe 'we have plenty of water, so there is no need for water-saving' (Quantum Market Research, 2014, p. 6).

Further, an ISO Standard, based on the WELS Scheme, is currently being developed for international application, illustrating that the objectives of the WELS Scheme are internationally relevant. Thus, the objectives of the WELS Scheme, as defined in the WELS Act, remain relevant nationally and internationally.

5.1.2 Is the current suite of products covered by the WELS Scheme appropriate?

Products currently regulated under the WELS Scheme are water-use products or water-saving products of any of the following kinds (as determined by s. 6 of the WELS Determination 2013 (No.2)): tap equipment, fixed showers, electric dishwashers, clothes washing machines, lavatory equipment, urinal equipment and flow controllers. There were mixed views around the current scope of products within the range of the WELS Scheme. Views varied as to whether or not the design of the WELS Scheme had to be changed insofar as it relates to the products in scope. Some stakeholders thought that no changes were required to the product range, while others wanted products added or considered that slight adaptations were required.

Some state and territory government representatives and an industry representative believed that the current list of products covered under the WELS Scheme was sufficient, because it already 'logically' captured the products that people use on a day-to-day basis.

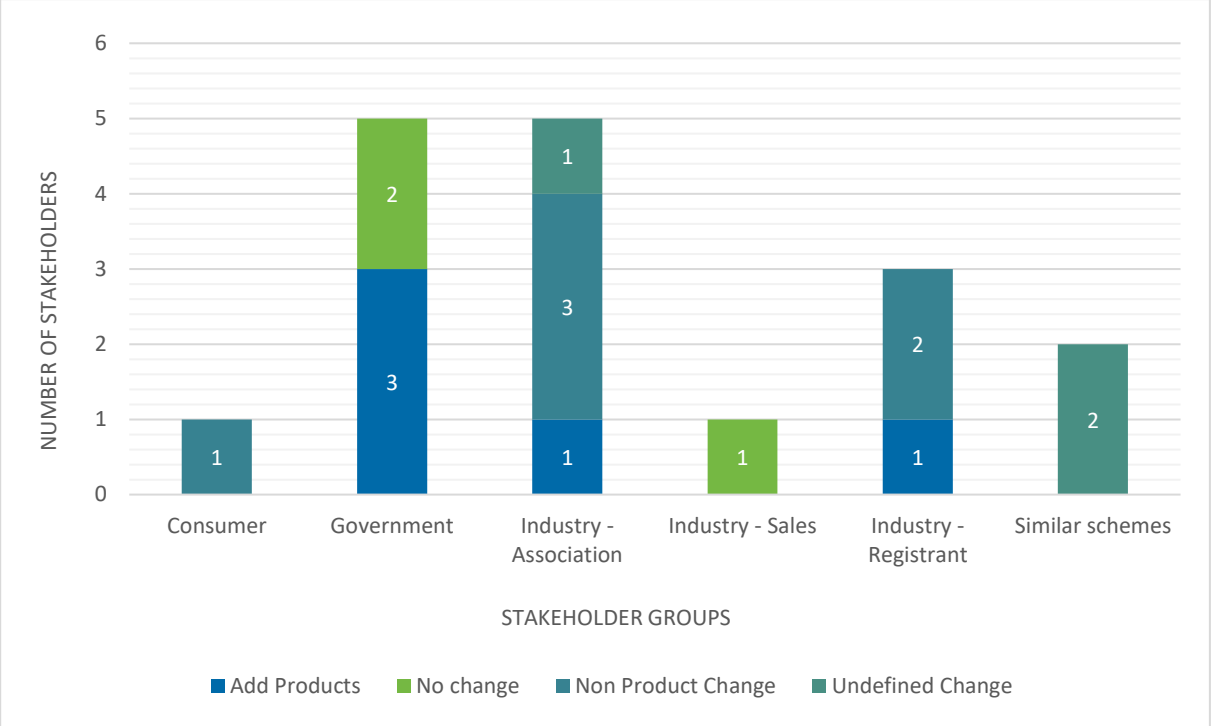
However, there were others who suggested that a range of products could be added to the WELS Scheme's current scope. These include waterless urinals, hot water meters, evaporative air conditioners, 'high water-using products', as well as some commercial products (e.g., waterless woks, commercial washing machines). When stakeholders spoke about adding commercial products, they were described broadly as any products that use too much water, and have the potential for minimum water efficiency standards and star ratings or performance. Note that, despite being described as a 'waterless urinal', the models do utilise some water for self-cleaning and, therefore, could be interpreted as fitting under the definition in the WELS Standard as a 'water-using urinal' (Standards Australia, 2016a). As the WELS Scheme considers the addition of incremental products, it should be noted that Smart Approved Watermark (SAWM) includes waterless urinals and there would be a degree of duplication across schemes.

There were also some slight adaptations suggested by industry representatives. These included considering the value of products and whether they should be added to the scope if there are little or no similar products against which to compare them. One state or territory government representative suggested that how each product's star rating correlated to litres would be valuable information that would be preferable on a single chart.

> *It would be really good to see on the WELS Scheme website a comparison chart of 3-star, 4-star, 5-star taps and how it correlates to litres. Whereas what we currently do now which is to look at 6-star and see the reading, and then go out and find the 5-star. It would save us a lot of time if we had it all on the one chart.* [State or territory government representative]

A state or territory government representative also suggested that industry websites should clearly show energy and water efficiency ratings, as having this upfront (i.e., next to the price of a product) as this would improve consumer access to this information.

Figure 12: Interview and submission findings – Current suite of products covered under the WELS Scheme, by stakeholder groups (n=22)



A few industry stakeholders are under the impression that the water-efficiency star levels are not reviewed on a regular basis. As products based on innovative technology are introduced into the market, the products are given higher ratings and there is a 'bunching' of products that qualify for these. The Energy Rating Label is reviewed every five years and adopts a minimum level, with products revised from this level. A maximum is also set within the energy efficiency scheme to rescale the star structure and ratings. This allows for the lowest rated products (i.e., 1 and 2-star products) to be removed from the market, an approach that some industry stakeholders thought the WELS Scheme could take.

5.1.3 Does the current WELS Standard remain appropriate?

The WELS Scheme Standard (AS/NZS 6400:2016) remains broadly appropriate. It describes the requirements for industry to comply with the Scheme and an interpretation of the labelling. It also provides guidance and standards to industry representatives who sit alongside the WELS Regulator on the Standards Committee.

The Standard has instituted a number of changes since the 2015 WELS Scheme Review. The April 2016 amendment to the Determination 2013 (No. 2) allowed for an update of the Standard (Standards Australia, 2016) to be issued. This 2016 version allows for registration and labelling of 4-star showers (high pressure only) and 6-star toilets, and separates product requirements into individual sections with streamlined labelling. The WELS Regulator made additional arrangements to assist industry with transitioning, and with promotional material required by the amended Standard. To assist with consumer understanding, the 2016 Standard also included changed labelling for toilets by putting the average flush volume more prominently on the WELS label. The Standard upgrade facilitated the move of testing requirements from the 6400 Standard itself to product standards, working towards more alignment of testing with WaterMark requirements.

The WELS Regulator is currently amending the Standard through the WS32 committee by planning the introduction of a 5-star rating for showers, tightening the labelling requirements for appliances to improve accuracy, and implementing incremental minimum star ratings. Ongoing discussions include further changes for requirements affecting minor variants of product designs, like spout shapes and lengths.

This Review identifies further opportunities to improve the Standard as a mechanism for enhancing the WELS Scheme and streamlining testing and registration requirements. However, some WELS Scheme products may not have water efficiency as their key component. An example provided by an industry stakeholder was the drying cycles in combination washer/dryers. Only the washing, and not the drying, cycle is captured by the WELS label, and yet there are combination washer/dryer models currently on the market that do not use any water in their drying function. The example of waterless urinals was also raised on several occasions.

> *There is an opportunity for [the WELS Scheme] to take up new technology that does not use water for drying to have a higher star rating, rather than products that use water as a negative aspect.* [Industry stakeholder]

Several government representatives also perceived the standards to be 'lagging behind the market', and not rewarding efficiency. The core aim of the WELS Scheme is to determine how water-efficient products are compared to other products. With the most efficient products rated as 6-stars, there is 'time lag' when ratings are reviewed, renewed and standardised. Note that this is driven through Standards Australia in conjunction with Regulator and industry stakeholders. This can result in a lack of differentiation between products within a single star-rating.

> *[It] can take almost two years or 18 months to get a change through on the standard.* [State or territory government representative]

It was also noted by one state and territory government representative that, with industry representation on the Standards' Technical Group so strong, governments are finding it more challenging to get their interests across as they only have two representatives.

A few industry stakeholders noted that there was not much differentiation within the star categories: For instance, to comply with the plumbing code a 3-star shower head must be installed. As a result, there are a lot of 3-star rated shower heads available on the market, which represents a 'lost opportunity' for higher starred or rated products. Others were critical of the standards, as certain testing arrangements for the WELS Scheme and E3 are the same.

One industry representative perceived a gap with the WELS Standard, as it does not stipulate where a product can be installed in order to meet a star rating in-situ. For example, a building with older pipes may result in lower system pressure and products functioning less effectively, thus not necessarily reflecting their star-rated performance despite low- and high-pressure ratings being accommodated in the Standard.

An industry representative identified that new additions (revisions) to the WELS Standard come in every 10 years, and that this is felt to be a good approach to achieving currency. In between additions, there can also be a series of amendments that do not affect or change more than 10% of the Standard. At least one industry representative felt that 'the standards have served the public really well'.

Industry did have a few criticisms of the WELS Standard for its use of language such as 'could' or 'may', and the potential for inconsistency in the enforcement agenda depending on the relevant representative from the WELS Regulator. Some industry stakeholders expressed the opinion that

the Regulator takes the most conservative approach when discretion is possible and that this could be improved by strengthening technical knowledge within the Regulator.

Several industry representatives were critical that all WELS Scheme products are required to have tests carried out, while WaterMark testing requires only a sample (25%) of similar products for certification. While not necessarily the case for all standards, an example is AS/NZS 4020:2018:

> *Where a range of products using the same wetted materials and processes is produced, the one with the highest surface area-to-volume ratio in the product range, i.e., worst case scenario, is required for testing* (Eurofins, 2021).

Others noted that while it is the role of the water efficiency standards to save water, other standards may achieve this same outcome too: for instance, flow controller flow rate testing through WaterMark (Australian Building Codes Board, 2016); flow rates in the plumbing codes under the sustainability objectives; internationally tested products, such as WaterSense labelled products from the USA; and individual product specifications.

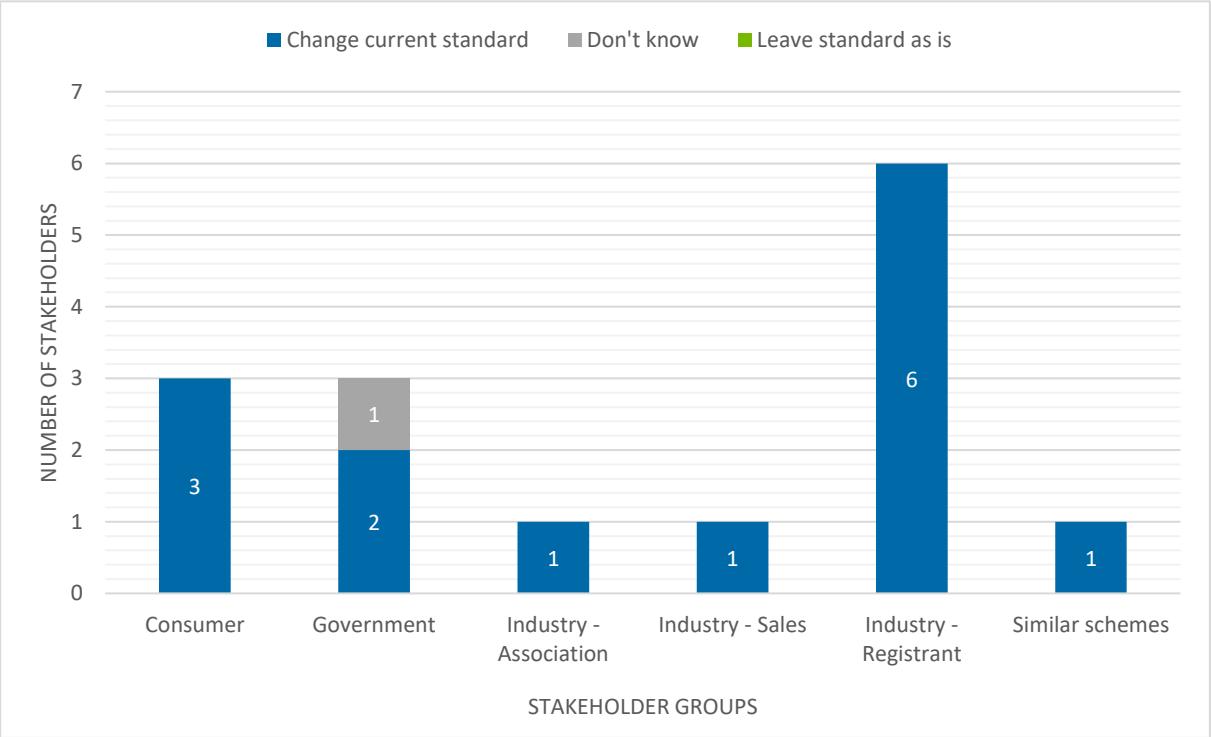
An industry representative noted that the WELS Standard's testing requirements do not accurately reflect how products are being used by consumers (such as different programs, water temperatures and washing loads). Another indicated that, as showers were the primary product for household water use, industry would support 'a minimum standard for showerheads, washing machines, dishwashers and toilets of 4-stars, with the further introduction of a 5-star showerhead rating[2] (to replace the 4F range of 4.5–6.0 litres per minute)'. Note that the 2018 Institute for Sustainable Futures report reinforced this, but identified that taps, then showers, were the highest consumers of household water:

> *These might be in the form of incentive programs run by water utilities, new regulations on building or plumbing or raising the minimum water efficiency standards under WELS* (Institute for Sustainable Futures, 2018, p. vii).

Although the majority of stakeholders interviewed did not comment on the WELS Standard design, all stakeholder groups suggested at least one change to its design.

[2] Currently under development in the next release of the WELS Standard as advised by the Regulator.

Figure 13: Interview findings – Design of WELS Standard (n=21)



5.1.4 What are the implications to the WELS Scheme from an equivalent ISO Standard?

In conjunction with the Department, Standards Australia is leading the development of an International Standard on the WELS Scheme through an international committee called ISO/PC316, which will develop an ISO Standard called the 'Water efficiency labelling programmes – requirements with guidance for implementation' (ISO 2018). It is thought that this will have a positive impact on the WELS Scheme, although research undertaken for the purpose of this Review highlights some potential consequences of developing an international ISO Standard. For example, the United Nations High Level Panel on Water's 2017 Roadmap provided a country-level agreement to pursue a standardised approach to water-efficiency labelling and to authorise its development through the ISO. In January 2018, the ISO approved a proposal to develop a new international standard on water labelling that will be based on the Australian/New Zealand standard underpinning the WELS Scheme (Standards Australia and Standards New Zealand 2016).

The original aim of an international ISO Standard was to allow consumers to identify and purchase the most water-efficient products more easily, and to link national schemes into a multi-national system that consumers and businesses can understand. The first meeting of the ISO/PC316 international committee took place on 24 July 2018 in Sydney, with 21 delegates attending (IWA Efficient Urban Water Management Specialist Group 2019). The ISO purpose originally scoped is described on the Standards Australia website, but the WELS Regulator has advised that the ISO design will be high-level only and that national standards will still be required. This is somewhat reinforced by 2019 WELSAG meeting minutes identifying that a simplified structure and generic concept be included in the design (Water Efficiency Labelling and Standards Advisory Group, 2019). A draft ISO, to validate this, was not available as part of this Review. Therefore, Australian registrants who export may be exposed to multiple countries' requirements.

Previously, the Australian Government anticipated that an internationally consistent ISO Standard would decrease costs for Australian businesses, but with the revised scope proposed this may be

limited. With the original scope of the ISO's purpose, Australian manufacturers may have increased access to overseas markets and international suppliers increased national compliance with the WELS Scheme. It could provide a tool that other countries can use to reduce their water usage by implementing similar consumer labelling schemes. It would be expected that a comparison across international jurisdictions would also inform the ISO Standard's development, which is expected to be completed in 2021 (Department of Agriculture, Water and the Environment 2020a).

An overview of the international context

The new ISO Standard will be based on the Australian WELS Standard (AS/NZ 6400), as well as contributions received from China, Malaysia, Singapore and New Zealand, and is anticipated to be an example of best practice globally. Currently, despite a wide range of international water efficiency labelling schemes, only three other countries have mandatory schemes in place. To support an understanding of the variations in practice globally, this Section provides an overview of the water-efficiency labelling schemes used internationally.

Table 2: Summary of water scheme by country

Country/ area	Scheme	Mandatory/voluntary	Government/industry/ NGO led
Australia	Water Efficiency Labelling Scheme (indoor)	Mandatory	Government
Australia	Smart Approved WaterMark	Voluntary	NGO
Canada	Watersense	Voluntary	Government
China	Water Conservation Certificate	Voluntary	Industry with independent certification
Europe (including UK)	European Water Label	Voluntary	Industry
Hong Kong	WSD Water Efficiency Labelling Scheme	Voluntary	Government
India	Water Efficient Products India (WEP-I)	Voluntary	NGO – Indian Plumbing Association (IPA)
Malaysia	Water Efficiency Product Labelling Scheme	Voluntary	Government
New Zealand	Water Efficiency Labelling Scheme	Mandatory	Government
Portugal	ANQUIP	Voluntary	NGO
Singapore	Water Efficiency Labelling Scheme	Mandatory	Government
United Arab Emirates	United Arab Emirates ESMA Water Efficiency Label	Mandatory	Government
United Kingdom	Water Technology List	Voluntary	Government
United Kingdom	Waterwise Checkmark	Voluntary	NGO
United States	Watersense (United States Government, EPA, n.d.)	Voluntary	Government

Source: IWA Efficient Urban Water Management Specialist Group, 2019

The following Section provides an overview of three key international schemes in New Zealand, Singapore and China. A table summarising this Section can be found in Appendix 1: Comparison of WELS label with international schemes' labels.

New Zealand

The New Zealand Water Efficiency Labelling Scheme (NZWELS) started in 2005 and requires the disclosure of water efficiency information for six product classes: dishwashers; washing machines; lavatory equipment; urinal equipment; taps; and showers (New Zealand Government, 2017), (Ministry for the Environment, 2020). These products are required to carry a label showing their comparative efficiency rating (based on a 'star' system) and water consumption information.

All new products regulated by the NZ WELS Scheme and supplied in New Zealand are required by law to be tested for water consumption and labelled in accordance with the WELS Standard. The New Zealand regulations are based on the joint Australia/New Zealand Standard AS/NZS 6400 and provide for harmonised labelling with Australia. However, unlike Australia, no minimum water performance requirements have been set in New Zealand – i.e., the regulations require sharing of information about water efficiency, but zero-star rated products can still be made available for sale provided they meet the labelling requirements. New Zealand does not require products to be registered and so does not operate a product registration system (Ministry for the Environment, 2020), (New Zealand Government, 2017).

Singapore

The Mandatory Water Efficiency Labelling Scheme (MWELS) was introduced in 2009 (IWA Efficient Urban Water Management Specialist Group, 2019), with products labelled according to their water efficiency which ranges from 0-tick to 3-tick. Items under MWELS include water fittings such as taps and mixers (basin, sink/bib and shower), dual-flush low-capacity flushing cisterns, urinal flush valves and waterless urinals (Public Utilities Board Singapore's National Water Agency, 2020). Suppliers are also encouraged to label the water efficiency of their showerheads under the Voluntary Water Efficiency Labelling Scheme. MWELS was extended to cover washing machines for household use in 2011.

To qualify for the label, products must meet the Public Utilities Board's performance requirements and standards. A testing laboratory or certification body accredited by either the Singapore Laboratory Accreditation Scheme or the Singapore Accreditation Council Mutual Recognition Arrangement is needed to verify a product's compliance with the standards and requirements.

China

The China Water Conservation Certification (CWCC) was formally launched in 2002. The scope of the water conservation certification covers nearly 40 types of products in four major areas, including industrial water saving, the water conservation of urban life, agricultural water saving, and the utilisation of unconventional water resources (IWA Efficient Urban Water Management Specialist Group, 2019). Certification is voluntary, with applicants certified against a set of criteria and products tested by designated institutions. Once a product has been certified, it is listed by the Chinese Government's Department of State Economic and Trade Commission.

The China Water Efficiency Label (CWEL) is also under development. This scheme is intended as a mandatory policy but has not yet been formally implemented except for toilets and reverse osmosis purifiers (China Legislation Standard, 2021). Taps, urinals, showers and squatting toilets were planned for 2021 but are not yet available. It is likely that the label will also include commercial, industrial and irrigation water-use appliances. The implementation model of the

CWEL scheme is based on self-declaration by manufacturers who provide information for its records, and market supervision by the government.

Industry views from stakeholder engagement

During stakeholder engagement for this Review, industry representatives provided numerous suggestions and concerns around the current standards, with several expressing optimism about the pending international standard. The advantages of a global scheme were perceived as 'resolving some issues with sourcing product from overseas, which can only help in the supply chain', and having common testing requirements.

5.1.5 Does the WELS Scheme continue to be used as an eligibility requirement for other rebate or subsidy programs?

Various entities, such as local water authorities and state and territory governments, run rebates or subsidy programs on certain products that are registered with the WELS Scheme. However, while the WELS Scheme does not administer these programs, it does continue to be used by them as an eligibility requirement. Some examples of these programs can be found in Sydney Water's annual Water Conservation Report (Sydney Water, 2020, pp. 49-51), although many of them are currently on hold following the end of the drought in 2010–11. The water-efficiency programs listed in Table 3 have been adapted to include only those that relied on WELS Scheme products.

Table 3: Sydney Water's water-efficiency programs

Project	Description	Year	Year on hold
Residential			
WaterFix® Residential	Plumbing service to install efficient fittings and fix minor leaks	1998	ongoing
DIY water-saving kits	Simple devices customers could install to make existing showerheads and taps more water efficient	2004	2011
Washing machine rebate	Rebate for purchasing a water-efficient washing machine	2003	2010
Toilet replacement service	Replace an existing single-flush toilet with a new 4-star dual-flush toilet	2008	2011
Dual-flush toilet rebate	Rebate offered to replace a single flush toilet with an efficient dual-flush toilet	2010	2011
Education, water-saving measures and pricing	Education, water-saving measures and pricing	1999	ongoing
Business			
SmartRinse	Replacing low-efficiency spray rinse nozzles	2006	2011
BizFix	Retro-fitted businesses with water efficient fittings	2009	2011
Council partnerships	Work with local councils to engage small and medium water-using businesses to achieve sustainable water savings	2009	2014
Schools			
Every drop counts in schools	Educational material and professional development for teachers, installation of water monitoring and alarm systems, and materials to help schools identify leaks	2005	2011
School amenities replacement	Fitting public schools with water efficient toilets, urinals, taps and showers	2010	2011

Source: Sydney Water, 2020, pp.49-51 (Note that the Review Team has been advised that a revised report reflecting updated content for the table above will be available on the Sydney Water website from November 2021).

5.1.6 How well does the WELS Scheme complement and interact with other schemes?

The WELS Scheme sits within a network of schemes including the E3 program, the WaterMark Certification Scheme, the National Construction Code and the Smart Approved Watermark. These four key schemes are summarised in Table 4. While there is interaction between the schemes, they are largely managed separately with some interdependencies between them. Further, whilst there is significant product overlap between the schemes, the full range of products regulated by each of the Schemes is not the same. The E3 label and the WELS label have a similar appearance, which goes towards consumer understanding, and WaterMark is a prequalification for plumbing products under WELS. More opportunity for alignment does continue to exist as evidenced by multiple stakeholder inputs, multiple regulatory bodies, and information management and registration processes for industry for the same products.

Table 4: Scheme comparison

The E3 Program, WaterMark Certification Scheme, National Construction Code and SAWM		
	**E3 Program**	This initiative of the Australian Government, states and territories, as well as the New Zealand Government, is an integrated program on energy efficient standards and energy labelling for equipment and appliances. The *Greenhouse and Energy Minimum Standards (GEMS) Act 2012* is the underpinning legislation for the E3 Program.
	**WaterMark Certification Scheme**	This is a mandatory certification scheme for plumbing and drainage products to ensure that they are fit for purpose, and authorised or use in plumbing and drainage installations. The Australian Building Codes Board (ABCB) manages and administers WaterMark as a national scheme.
	**National Construction Code**	This contains all performance requirements for the construction of buildings. The performance requirements set a minimum standard for buildings, building elements, and plumbing and drainage systems.
	**Smart Approved WaterMark**	Currently Smart Approved WaterMark and WELS product ranges are mutually exclusive, but there are opportunities for more interdependency in which SAWM can refer to WELS ratings when guiding consumers.

The interaction and complementarity of the WELS Scheme with other schemes was a major theme of both the 2010 Review (Water Efficiency Labelling and Standards Regulator, 2010) and the 2015 Review (Water Efficiency Labelling and Standards Regulator, 2015a). The Department accepted the recommendations made in the latter to implement a joint check testing and compliance program with the E3 Program for relevant whitegoods covered under both schemes, as well as a unified single product registration process for the WELS Scheme and E3 (for whitegoods) and for the WaterMark Scheme (for plumbing products). The aim of this recommendation was to allow for common documentation in the registration of common products. Implementation has included the testing regimes in the product specific standards to align with WaterMark and E3.

In its self-assessment, the WELS Regulator indicated that it is 'working with WaterMark and E3 on streamlined approaches to product registrations' (Department of Agriculture, Water and the Environment, 2019). However, it is understood that these recommendations have been only partially implemented due to the multiple stakeholder groups involved, different legislation and regulatory authority structures, resources and budget constraints and planning lead times. Another consideration is the cost-effectiveness of combining schemes now. Combining schemes (in part or whole) would affect the scope and cost of the planned WELS ICT upgrade.

Stakeholders from other regulators acknowledge that there are areas of commonality that remain, for instance, in working with online sales, testing houses, industry and consumer education. There are even opportunities to combine elements, such as basing E3 (administered by the Department of Industry, Science, Energy and Resources) and the WELS Scheme (administered by the Department of Agriculture, Water and the Environment) within the same Commonwealth department, for instance, both schemes could report to the same Minister.

WaterMark has more than 180 products requiring registration, five of which are common with the WELS Scheme, while E3 has 40 product types of which two are common. The ability to include management of these incremental requirements would require a unique treatment of these parts in the WaterMark and E3 systems. However, as the products are already registered in these systems, WELS Scheme requirements would add incremental testing and approval into any registration process and could be incorporated into compliance activities.

For instance, plumbing stakeholders identified that they see non-compliant WELS products in homes but are only authorised to report on and address those which do not comply with WaterMark. The other differences are that WaterMark is a health and safety standard directed towards industry and WELS is a consumer-facing scheme, which may create different communication strategies for WaterMark. The WELS Scheme consumer communication is largely done through stakeholders like councils, water utilities, other schemes and the WELS website, which could be extended upon by the Scheme. E3 is also a consumer facing scheme. These consumers are buying the same E3 and WELS registered products, which are separately accredited and labelled.

WELSOG minutes show that WaterMark and WELS are discussing future cooperation when working to educate industry, and that further action is required to share information between Regulators in WA (Water Efficiency Labelling and Standards Officials Group, 2019). The aim of enhancing synergies across these schemes is supported by the Australian Government's Deregulation Taskforce (the Taskforce), the focus of which is on ensuring that, where required, regulation is designed and applied in the most efficient and timely way with the least cost to businesses (Australian Government, 2021). Notably, a priority area for the Taskforce is targeting unnecessarily overlapping or duplicative cross-jurisdictional regulatory burdens, and working with businesses, Commonwealth agencies, and the states and territories to identify and prioritise reform.

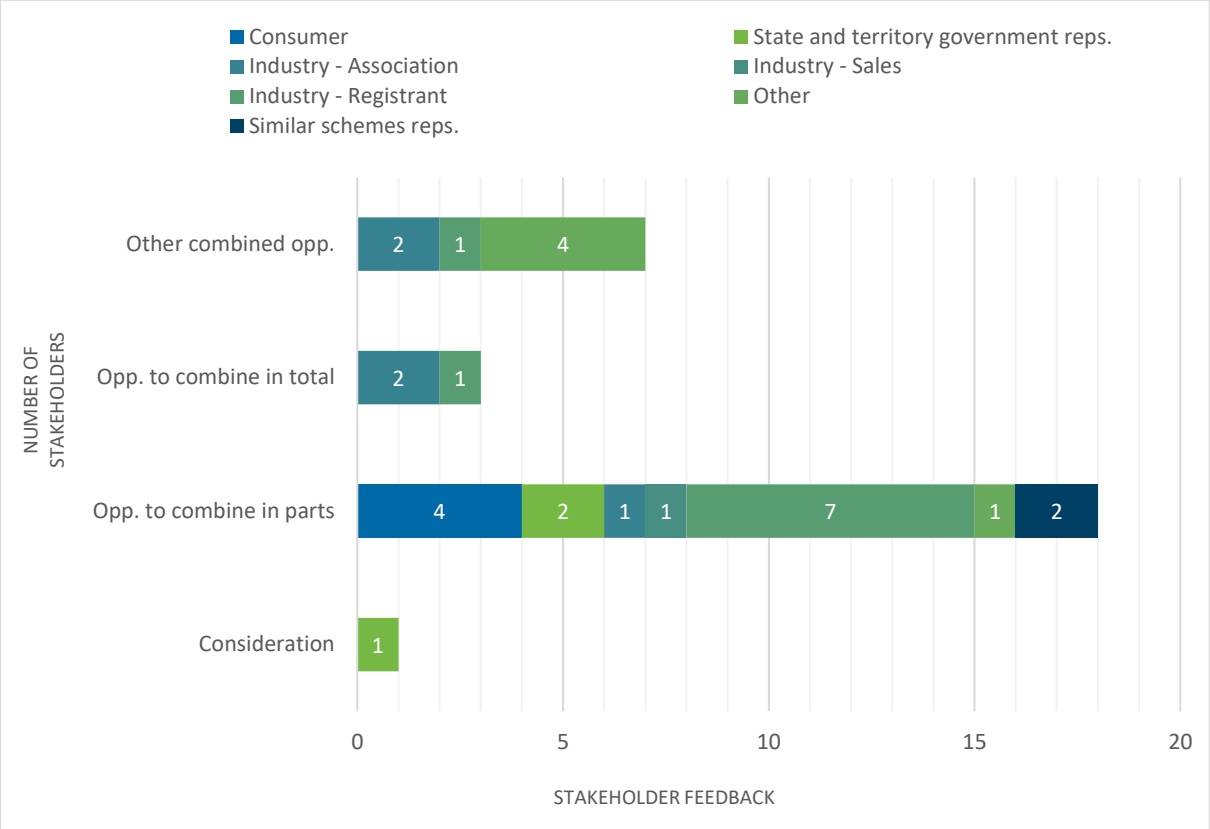
As WELS Scheme check testing is still being developed (2019 WELSOG Minutes), joint check testing with E3 is not yet possible. Further, a unified single-product registration process has not been completed. In relation to WaterMark, the proposed solution for the industry was to ask Conformity Assessment Bodies (CABs) to undertake the registration process on their behalf (WELSOG November 2018). Two full-day sessions were held with CAB representatives (5 of 8 CABs attended), in which they were taken through the process of WELS registration and provided with the steps they would need to have in place to be able to make an application for their clients. Their response was that they would consider doing this as a service but would have to charge their client, although one CAB has provided this service for a number of years. The Regulator has advised that, since those sessions took place, none of the other CABs have provided the service, which is reflected in the feedback from industry in this Review.

This theme continued throughout this Review, with 97% of people who discussed scheme synergies suggesting some level of change (as demonstrated in Figure 14).

The majority view, shared by all cohorts, was that there were opportunities to combine parts of the WELS Scheme with other related schemes. This generally reiterated the theme from the 2015 Review, and from the CHOICE 2018 report, of improving the one-stop shop experience for product registration (CHOICE, 2018). Three stakeholders, composed of industry associations and industry registrants, considered there was an opportunity to combine the WELS Scheme with E3 and WaterMark.

Most attention, particularly from Australian manufacturers, related to the WaterMark Scheme, but there was also interest in the relationship between E3 and the National Construction Code (as it relates both to building and plumbing requirements). These schemes will be considered in turn. Figure 14 illustrates that most stakeholders saw the opportunity to partly combine the Scheme, or described other opportunities to combine. A few stakeholders had a stronger stance that there was an opportunity to totally combine the schemes, while one state or territory government representative said the combining of schemes to some extent should be considered.

Figure 14: Interviews and submission findings – Scheme synergies (n=29)



Equipment Energy Efficiency (E3) Program

The E3 Program is similar to the WELS Scheme in that it is a nationally consistent initiative aimed at driving improvements to the energy efficiency of all new appliances and equipment sold. Underpinned by an intergovernmental agreement, E3 is managed by the Commonwealth Department of Industry, Science, Energy and Resources. There is a subset of approximately 40 products covered by E3 that also falls under the WELS Scheme, namely whitegoods such as dishwashers and washing machines.

Stakeholder feedback on the WELS Scheme and the E3 Program focused on three main areas:

- registration
- compliance
- labelling.

<u>Labelling complementarity</u>

As the WELS and E3 labels are aligned and use a similar design, most stakeholders considered that, from the perspective of consumers, it would be assumed that there was only a single scheme covering both issues. This was reinforced by the E3 Regulator, which noted that it was not uncommon to receive WELS Scheme-related queries when undertaking E3 inspections.

> *Given the success in creating identical labels it would surprise most consumer[s] to learn that they did not emanate from the same source.* [State or territory government representative]

> *I don't know about them needing to be the same scheme but they do need to be talking to each other and making both programs visible.* [State or territory government representative]

Given this perspective, it is important that labels for the two schemes are both consistent and understood by consumers, particularly as some stakeholders are concerned that the guidance provided by the labels is not always relatable. With washing machines, for example, the water efficiency and energy efficiency ratings may not be derived from the same wash cycle. Thus, while each individual efficiency rating is accurate when measured against the requirements of its own scheme, a consumer may not be able to achieve the energy and water efficiency at the same time on the same cycle:

> *There are probably occasions where the setting that is being used to determine the water consumption would be different to the one used in the energy testing. This would be typically noted in the standards (both energy and water).* [State or territory government representative]

> *We need to avoid having a high-starred water-efficiency product, but then find out that it is 1-star rated in energy.* [State or territory government representative]

Similarly, stakeholders noted that while information on water or energy efficiency is generally easily available on the respective websites of the schemes, it is not easy to find it set out clearly side-by-side. Some stakeholders also saw opportunities to improve consumer education on the interface between these two issues. For instance, when purchasing showers the consumer focus is likely to be on conserving water without a similar consideration of energy savings. It was considered there was room for better communications regarding the alignment and efficiency of all resources, not just water or energy individually.

> *It must be as easy as possible for customers to access and compare water and energy use, including while shopping online.* [Industry stakeholder]

Pursuant to the WELS Standard (AS/NZS 6400:2016) ss.8.3.2.2 and 9.4.2.2., WELS and energy labels can already be combined for dishwashers and washing machines.

WELS Standard (AS/NZS 6400:2016) s. 8.3.2.2. Combined

Labels for dishwashers eligible for a Star rating shall be designed in accordance with Figure 8.3 when combined with the energy label.

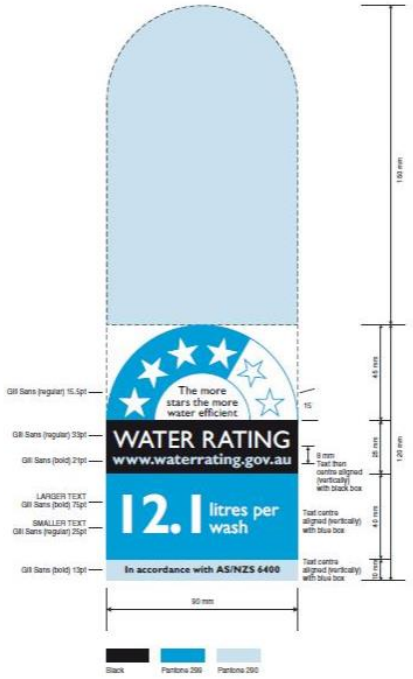


FIGURE 8.3 LABEL FOR DISHWASHERS—COMBINED

WELS Standard (AS/NZS 6400:2016) s. 9.4.2.2. Combined

Labels for washing machines eligible for a Star rating shall be designed in accordance with Figure 9.3 when combined with the energy label.

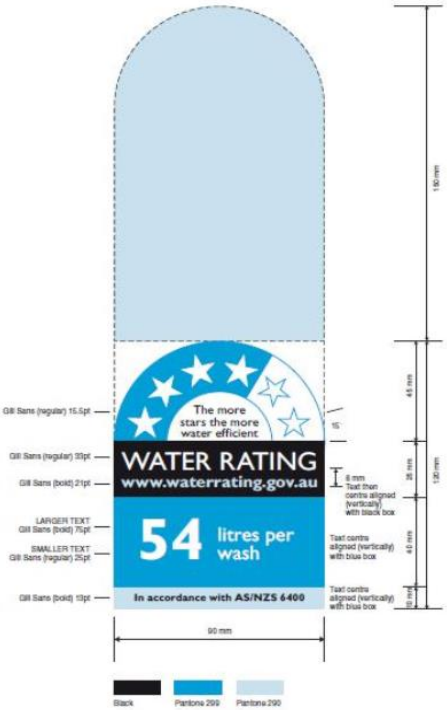


FIGURE 9.3 LABEL FOR WASHING MACHINES—COMBINED

Registration

There was not a strong call from industry for the WELS Scheme and E3 to be merged, with one stakeholder noting that the disparity in how states and territories operate in relation to energy was even greater than for water. Most feedback instead focused on opportunities to streamline the registration process by ensuring products are registered under both schemes. Industry stakeholders noted that the majority of the information was the same and that this repetition created an extra burden on industry. Others suggested there should be a single online gateway for submitting information to both schemes.

> *The registration process could be simplified and streamlined by cooperating and aligning with the E3 programme on a one stop shop registration process.* [Industry stakeholder]
>
> *The WELS registration system, the way it works is really good. The only complaint is that we have two parallel schemes where we provide the same information to both. [The WELS Scheme] is probably the easier registration to do. On the surface it is not a lot of extra work that we need to do, but we would support a one-stop shop.* [Industry stakeholder]

Compliance

Stakeholder feedback on compliance between the two schemes indicated there was progress against the recommendation from 2015, but still room to mature. There was evidence, for instance, that when E3 inspectors detect non-compliance that also relates to WELS Scheme products, this information is shared.

The E3 Regulator, based in the Commonwealth Department of Industry, Science, Energy and Resources, is the sole party responsible for administering the *Greenhouse and Energy Minimum Standards Act 2012* in Australia. However, the E3 Regulator noted that, under the GEMS Act, the E3 Inspector is allowed to undertake joint inspections. We understand that this is being actively considered by the WELS Scheme and E3, and support this being formalised to enable more efficient compliance operations.

In addition, it was noted that under reformed legislation, some of the E3 inspection powers had been shifted to the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (the Regulatory Powers Act). This is now considered best practice for Commonwealth Acts to ensure consistency both for Regulators and Australian citizens:

> *The Regulatory Powers Act provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as civil penalties, infringement notices, enforceable undertakings and injunctions. (Attorney-General's Department, 2018, p. 1)*
>
> *New or amending Acts that require monitoring, investigation or enforcement powers of the kind available under the Regulatory Powers Act should be drafted to trigger the relevant provisions of that Act, unless there are compelling policy reasons to the contrary.*

It is understood that this is currently subject to consideration by the WELS Regulator.

WaterMark

The WaterMark Certification Scheme (WaterMark) is a mandatory certification scheme for plumbing and drainage products to ensure they are fit for purpose and appropriately authorised for use in plumbing and drainage installations. WaterMark is managed by the ABCB as a national scheme. Of the more than 180 WaterMark product-types, five are common with the WELS Scheme:

toilets, tap ware, urinals, showerheads and flow controllers. While this covers most WELS Scheme products, it is only a small segment of the products covered by WaterMark.

There is already a level of interaction between the WaterMark and WELS agencies that has been described as 'strong' by one stakeholder, with memberships across governance groups: for instance WaterMark is represented on WELSAG and involved with WELSOG. Agency stakeholders also identified that there are commonalities between the schemes in their need for point-of-sale compliances, and their common products, industry and issues, such as non-compliant online products entering the market. Others identified that continuous engagement and consultation is important and in place. The interaction between the WELS Scheme and WaterMark was a major theme of the 2015 Review and continued to be in this Review, especially for manufacturing and plumbing representatives. Stakeholder feedback focused on the themes of:

- registration and testing
- compliance issues.

> *The value of bringing both schemes under a single administration... is an imperative that can no longer be ignored by government. All too often decisions are based on what is best for bureaucracy rather than the broader good.* [Industry stakeholder]

Further discussion about alignment between WaterMark and the WELS Scheme are outlined below. Where there were arguments against merging, they came from Regulators. Issues included the need for political will, changes in state/territory and national legislation, standards revisions, Regulator structures, and investment. In the Review's opinion, despite these objections, the value of significant streamlining remains possible, for instance, in common registration and compliance management. There is no doubt this would be a complex change and any benefit/cost analysis would be able to identify whether the value outweighs the costs.

<u>Registration and testing issues</u>

Many industry representatives raised concern about duplication and inconsistency between the testing and registration regimes of the WELS Scheme and WaterMark. This is because it is a prerequisite for WELS Scheme registration that relevant products are first tested, certified and registered with WaterMark. Consequently, industry stakeholders shared frustrations that having received a WaterMark certification through testing by a CAB, the WELS Scheme would then require the product to be retested multiple times. This retesting, which could be due to differences in sample size requirements or decisions on product variants that might impact on water efficiency, cost industry both in time and testing fees.

There are some areas where there could be a disconnect between the CABs, industry and the Regulators, which could be resolved by educating industry and increased cooperation with CABs. According to industry stakeholders:

> *There is a very strong case for the assessment of WaterMark products requiring WELS registration to be carried out at the same time, significantly reducing cost and improving efficiency of the process for both industry and government.*
>
> *WaterMark testing requires a sample (say 25%) of similar products to be tested for certification. Same tests are required to be carried out for 100% of products under [the WELS Scheme] plus incremental efficiency specific tests. It's just ridiculous the extra cost, it adds a lack of value that adds to that company.*
>
> *We've found that what is acceptable to a WaterMark certifier is not acceptable for [the WELS Scheme]; or is not enough. WaterMark says to test 5 products and then it will*

certify a group of 20 based on similarities between the products. [The WELS Scheme] will then say, 'no, you must test the remaining 15 as well'.

The reviewers understand that, as part of implementing the 2015 Reviews recommendations, the WELS Regulator has met with CABs to see if this issue can be addressed. As part of that process, some CABs agreed that they could submit registrations on behalf of a company to streamline this process, an option promoted through the WELS newsletter *InkWELS*.

However, there was no evidence to indicate that companies have been utilising CABs to register products, and it is clear from stakeholder input during this Review, that this issue has not yet been resolved. This is explored further in Section 5.3 relating to Efficiency and Cost.

Compliance issues

Stakeholders considered there were opportunities to improve the design (or administration) of the regulatory frameworks governing the WELS Scheme and WaterMark so as to foster a more efficient and effective compliance regime for water-efficient products. For example, the compliance assessment point for the WELS Scheme is at point of sale, while for WaterMark it is at point of installation. This means that the point of enforcement for the WELS Scheme is with the seller whereas for WaterMark it is on the plumber installing the product, a situation that creates missed opportunities to align compliance and inspection.

Inspection upon installation cannot identify whether there has been WELS Scheme compliance on products where the packaging and labelling has been removed. Thus, there were a number of industry suggestions that a WaterMark stamp on the product should also reflect effective WELS Scheme compliance. This could either be achieved by reversing the order of testing, or by combining WaterMark and WELS Scheme testing and/or schemes.

The two previous reviews undertaken in 2010 and 2015 also identified that state and territory plumbing officers are unable to share compliance information with WELS Scheme compliance officers. The WELS Regulator has taken some steps to resolve this issue but, as of the 2020 WELSOG minutes, this is still 'ongoing' (Water Efficiency and Labelling Standards Regulator, 2020).

We note that the WELS Scheme has implemented some practical interim solutions. In 2019, for instance, it offered for jurisdictional plumbing inspectors to observe inspections coordinated by WELS Scheme inspectors, with the builder or developer able to grant or refuse consent (Water Efficiency and Labelling Standards Regulator, 2019).

Many participants, in industry and other Regulators, identified that the point-of-sale feature of the design was a strength missing from WaterMark and that alignment here would add value to both schemes. Queensland, for example, has already added a point of sale to its WaterMark scheme. While the point-of-sale feature was a repeated theme, the reviewers understand that, in effect, this is a reform that WaterMark needs to consider, so is outside the mandate of the WELS Scheme unless these areas of both schemes can be merged.

It is understood that WaterMark relates to product integrity, not water efficiency, but the inconsistency between the two schemes, which applies to the same market segment, is something that should be addressed. [Industry stakeholder]

Industry would prefer one system … It is quite complex to establish that from our view. The states would still need to regulate at the point of installation even if they had a point-of-sale update. [Regulator stakeholder]

National Construction Code

The National Construction Code (NCC), a performance-based code containing all performance requirements for the construction of buildings, has been developed around a hierarchy of guidance and code compliance levels. The stated 'Performance Requirements are the minimum level that buildings, building elements, and plumbing and drainage systems must meet' (Australian Building Codes Board, 2021).

The NCC is maintained by the ABCB comprised of the Building Code Australia (BCA) and the Plumbing Code Australia (PCA). The ABCB website explains that:

- *the NCC is given legal effect by relevant legislation in each State and Territory. This legislation prescribes or 'calls up' the NCC to fulfil any technical requirements that are required to be satisfied when undertaking building work or plumbing and drainage installations*
- *each State and Territory's legislation consists of an Act of Parliament and subordinate legislation which empowers the regulation of certain aspects of building work or plumbing and drainage installations, and contains the administrative provisions necessary to give effect to the legislation.*

States and territories also have the ability to depart from the NCC with jurisdiction-specific variations.

NCC Volume 2 (Requirements for residential and non-habitable buildings and structures)

There is currently some integration of the WELS Scheme into the NCC. In Class 1 and Class 2 buildings serviced by a water supplier, there are minimum WELS Scheme requirements for showers, tap ware and water cisterns, as set out in Table 5. Class 1 and Class 2 buildings are, in effect, small residential dwellings.

Table 5: Australian Building Code WELS Scheme requirements

Product	Minimum requirement
Shower roses	3 stars
Tap ware	3 stars
Water cisterns	4 stars

By incorporating minimum WELS Scheme requirements into these building classes, the reach of the WELS Scheme is extended and its objectives are supported. Some government stakeholders noted, however, that there would be benefit in including similar minimum requirements in other building classes, where the drivers for water efficiency would often appear to be the same:

> *There should be more of a push so that the other classes of buildings should be brought into line. You see some owners take a more holistic approach for energy efficiency and water conservation. But there are a lot of places that still have the big, whole flush toilets even now when you'd think that they would be changing them over.* [State or territory government representative]

The reviewers consider there is merit in this suggestion, which could be achieved in several ways. This could be achieved by ensuring that all states and territories have adopted the relevant sections of the NCC; or by expanding the building classes that have minimum WELS Scheme

requirements: for example, water cisterns and showers could be included in Class 5 buildings (office buildings used for professional or commercial purposes).

The above could be achieved either by amending the NCC or working with individual state and territory governments for jurisdiction-specific additions to their codes. The former would ensure a more consistent and efficient approach across Australia as, for many jurisdictions, amendments to the national code are automatically applied; the latter would enable those jurisdictions that face a greater need to conserve water to go further than others.

NCC Volume 3 – Plumbing Code

Stakeholders raised concerns that there is some misalignment between the requirements of the WELS Scheme and that of the PCA. For example, it was noted that the PCA sets a maximum flow rate of 9L/minute. However, some WELS Scheme-registered showers can deliver up to 10L/min and receive a 3-star rating. This creates a situation in which a product may comply with the WELS Scheme but not with the PCA.

> *The issue with the tapware particularly the Plumbing Code of Australia that all states adopt, their mandate is the tap has a maximum flow rate of 9L/min as opposed to a lesser figure that may be more water efficient. That figure is provided as more for a design perspective. When you are designing a plumbing system, you're designing for 9L/min. So, it is not necessarily there for water efficiency reasons, but it is to make sure that the pipes are the right size.*
>
> *The outcome is that out of the Plumbing Codes of Australia, you couldn't force a 5-star, 6-star tapware when the code only says 9L/min – they just don't align. It does talk about cisterns being 6L or 3L flushes at a minimum, so that would be more aligned to a 3-star flush*. [State or territory government representative]
>
> *Builders needs to meet the WELS Scheme, WaterMark and Plumbing Code of Australia (which has installation requirements). Better integration between the 3 schemes would be helpful. There are some contradictions. We would love a streamlined approach to all three of them.* [Industry stakeholder]

Several stakeholders also raised concern about the way in which the most efficient products work with other infrastructure such as wastewater pipes. If the gradient is not right, then the most water-efficient products can lose effectiveness. According to some stakeholders, the Plumbing Codes Committee is currently considering issues of sewerage pipe sizing.

Building efficiency schemes

Industry stakeholders also mentioned several other schemes, both in Australia and internationally, which they considered could be better harmonised with the WELS Scheme. While not an exhaustive list, these ranged from the Australian Government-led NABERS and the Australian private Green Star rating, to international schemes like the Hong Kong-based BEAM Plus and US-based LEED rating (as set out in Table 6).

Some stakeholders, particularly those involved in manufacturing WELS Scheme products, believed that benefits could be achieved by aligning the WELS Scheme with one of these recognised schemes, while others considered that it could reduce the regulatory burden on industry.

At the time when detailed ISO-defining test methods and customising labels were conceived, the WELS-based ISO Standard was thought to offer cost reductions and improved international market access for Australian companies, thereby making compliance to a water-efficiency scheme less of a burden (Department of Agriculture, Water and the Environment, 2019). An industry stakeholder observed that there may also be opportunities for label sharing between Australia and other

countries (such as China, Singapore, UAE, UK and USA) As, with a common scheme in place, Australia would be able to label products that would be accepted internationally. While it is not clear how the high-level ISO now envisaged would impact industry, it could reasonably be assumed that Australian companies meeting WELS Scheme standards would also meet an international standard and, therefore, gain access to those markets adopting the ISO Standard. Thus, the key results from the adoption of an ISO Standard would be a decrease in costs and improvements in access to international markets.

In terms of domestic schemes, especially voluntary ones, the reviewers agree that further integration could see greater uptake of WELS Scheme products, and a flow-on effect to water conservation. However, while some greater communication with these schemes might be possible it is not considered a priority compared with WaterMark and the National Construction Code.

Table 6: Related efficiency schemes

	NABERS	Green Star	BEAM Plus	LEED
Logo	NABERS	greenstar	HKGBC BEAM Plus 綠建環評	LEED
Description	NABERS is a national rating system that measures the environmental performance of Australian buildings and tenancies. Put simply, NABERS measures the energy efficiency, water usage, waste management and indoor environment quality of a building or tenancy and its impact on the environment.	Launched by the Green Building Council of Australia in 2003, Green Star is Australia's largest voluntary and truly holistic sustainability rating system for buildings, fit-outs and communities.	BEAM Plus is Hong Kong's leading initiative to offer independent assessments of building sustainability performance.	LEED was created to measure and define what green building means, and to provide a roadmap for developing sustainable buildings. LEED then established a baseline – a universally agreed-upon holistic system for reducing environmental impact.
Jurisdiction	Australia	Australia	Hong Kong	United States
Reference	Yes	Yes. WELS Scheme ratings are used to attribute scores to buildings.	No	
Website	https://www.nabers.gov.au	https://new.gbca.org.au/rate/green-star	https://www.hkgbc.org.hk/eng/beam-plus/introduction	https://www.usgbc.org/leed

5.1.7 How consistent is the WELS Scheme across state and territory regulations?

Stakeholders were asked for their views on consistency across jurisdictions as part of the online survey. Of the 24 responses, there were 16 responses of which 68% considered the requirements to be very well aligned with consistent messaging. Only 12.5% thought there were significant differences between states and territories.

In terms of alignment with building codes, there were some shared industry perceptions that there is 'always an issue' between the WELS Standard and the plumbing standard as they are not aligned. In the 2019 WELSAG minutes, it was noted that:

> *there is a disconnect as the WaterMark scheme has not yet adopted the current 3662:2013 standard yet WELS requires compliance with that standard. The WaterMark scheme is still endorsing the 3662:2005 version of the 3662 Standard. It was noted that this is creating problems for CABS, testing laboratories and scheme registrants* (Water Efficiency Labelling and Standards Advisory Group, 2019).

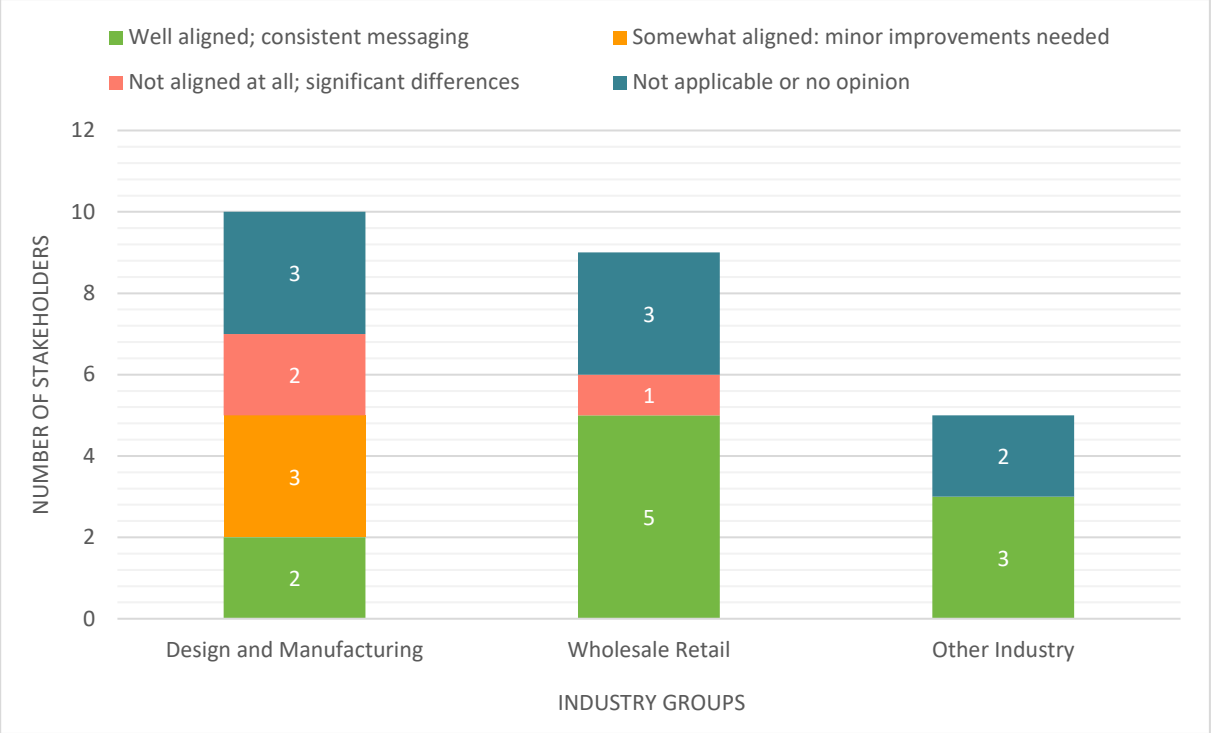
This is still an issue:

Figure 15: Extract from WaterMark requirements

Shower	A showerhead through which water is intended to pass to form a spray for bathing purposes, which may include a fixed or pivot arm, a flexible hose (with or without a flow controller), tap top assemblies, or other components.	AS/NZS 3662 Performance of showers for bathing	2005
	Metallic taps, plastic taps, mixing taps, sensor (non-touch) taps, lever taps, timed flow taps, mixing taps mechanical (non-thermostatic), hand spray and tapsets in a range of nominal sizes from DN 6 to DN 50, generally for continuous operating temperatures not exceeding 80°C.	AS/NZS 3718 Water Supply – Tapware	2005

Source: Australian Building Codes Board, 2021a

Figure 16: Survey findings – If you work across more than one state/territory in Australia, how well aligned are requirements across Australia? (n=24)



Jurisdictional consistency

All Australian jurisdictions have passed WELS Scheme legislation, albeit through different laws, as set out in Table 7.

Five Parties use the 'applied provisions' form of legislation. Under this model, a state or territory parliament passes a law that directly applies Commonwealth provisions within its own jurisdiction. The Party reserves the right to depart from the Commonwealth law, which can be recorded in a schedule. This approach ensures consistency across jurisdictions, without the need for future amendments, as it enables any amendments to the Commonwealth Act to apply automatically (unless the Party takes action to modify it).

Three Parties use a 'mirror' form of legislation. Under this model, the relevant parliament passes a law that largely replicates the Commonwealth legislation but differs as appropriate for a state law. To ensure national consistency, this model requires the state law to be amended if the Commonwealth law is amended, otherwise, there is the potential for divergences to emerge. This model is preferred by some parliaments as it gives them control over subsequent repeal and amendment.

Table 7: State and territory approach to legislation

'Applied provisions' legislation	'Mirror' legislation
ACT, NSW, NT, SA, TAS	QLD, VIC, WA

In general, the WELS IGA has been effective in forming a consistent, national registration point for all products. While industry has identified issues to improve the registration process, fundamentally the IGA has successfully 'combined the authority of two or more jurisdictions to pursue a mutually agreed outcome' (Saunders, 2005, p. 294).

Similarly, the IGA has been effective in ensuring mutual recognition principles are given effect within Australia, and largely with New Zealand (Australian Government, 2005, p. 5).

This Review also examined the consistency of the legislation at a more granular level and identified some inconsistencies discussed here and set out in Table 8.

Imprisonment substituted for a fine

The Commonwealth Act imposes a penalty of six months imprisonment under Sections 51(3), 61(3) and 62(3) and (4) (Australian Government, 2013a). Three Parties to the IGA, namely Australian Capital Territory (ACT), Queensland (QLD) and Western Australia (WA), have replaced the penalty of imprisonment with a fine. For the ACT and WA, this is 60 penalty units, while for QLD, it is 100 penalty units.

Certain jurisdictions appear to have changed their penalties to be lesser than those imposed at the Commonwealth level. In amending its legislation from 'mirror' to 'applied provisions' legislation in 2015, the then Attorney-General of the ACT noted:

> *I point out that the ACT bill differs from the current commonwealth law in one respect: the criminal penalty imposed for three offences [...] The ACT bill will retain, from the current legislation, a monetary penalty of 60 penalty units instead of the penalty of six months imprisonment that applies in the Commonwealth legislation (Corbell, n.d.)*.

While this does create inconsistent penalties across jurisdictions, it is an intentional change by the three parliaments. Given the current extent of enforcement actions (only one enforcement action has progressed to prosecution), it is unlikely to be of practical significance.

Registration period

In contrast, there are some inconsistencies that appear accidental and are due to state legislation not being amended to remain consist with the *WELS Act 2005* (Cth). For instance, the 2015 amendment to the Commonwealth Act provides the WELS Scheme with discretion to set the registration period for WELS Scheme, currently set as one year. However, the laws of QLD, Victoria (VIC) and WA still set the registration period at five years. This has not been amended since the last review.

There are some other minor differences noted, which are also likely due to the 2015 amendments. For instance, the Commonwealth Act added a broader definition of 'supply' that has not been reflected in all state and territory Acts.

Penalty units

The reviewers also examined the consistency of penalty units across jurisdictions. Most legislation uses the Commonwealth penalty unit value (either through applied provisions or by directly referring to the Commonwealth definition). The exception is QLD, which uses its own penalty unit value and different numbers of penalty units accordingly. For instance, QLD imposes a fine of 100 QLD penalty units (at $133 per unit) for an equivalent Commonwealth fine of 60 penalty units (at $222 per unit), a negligible difference at $13,300 versus $13,320.

Given this, the reviewers consider the penalty units are consistent across all Parties to the IGA.

Table 8: Comparison of Commonwealth, state and territory legislation

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Year	2005	2015	2005	2014	2005	2013	2013	2005	2006
Purpose		An Act to apply as a law of the Territory a national law relating to water efficiency labelling and standards, and for other purposes.	An Act to apply the Water Efficiency Labelling and Standards Act 2005 of the Commonwealth (Cth) as a law of this State; and for other purposes.	An Act to apply as a law of the Territory a national law relating to water efficiency labelling and standards, and for related purposes.		An Act to apply the Water Efficiency Labelling and Standards Act 2005 of the Cth as a law of this State; to repeal the Water Efficiency Labelling and Standards Act 2006; and for other purposes.	An Act to apply the Water Efficiency Labelling and Standards Act 2005 of the Cth as a law of this State and for related purposes.	The purpose of this Act is to provide for water efficiency labelling and for the making of water efficiency standards.	An Act to provide for water efficiency labelling and for the making of water efficiency standards, and for related purposes.
Model		Applied provisions.	Applied provisions.	Applied provisions (previously mirror legislation but changed to avoid need for future amendments).	Mirror legislation.	Applied provisions.	Applied provisions.	Mirror legislation.	Mirror legislation.
Consistency		Automatic – 'applied provisions' includes amendments to the Cth Act.	Automatic – 'applied provisions' includes amendments to the Cth Act.	Automatic – 'applied provisions' includes amendments to the Cth Act.	Must be amended by State legislature.	Automatic – 'applied provisions' includes amendments to the Cth Act.	Automatic – 'applied provisions' includes amendments to the Cth Act.	Must be amended by State legislature.	Must be amended by State legislature.

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Functions and powers		The Commonwealth Regulator and other authorities and officers mentioned in the applied provisions have the same functions under the applied provisions as they have under the Cth water efficiency laws, as those laws apply to the Cth.	The Commonwealth Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Cth water efficiency laws, as those laws apply to the Cth.	The Commonwealth Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Cth water efficiency laws, as those laws apply to the Cth.	Functions are conferred within the Act itself.	The Commonwealth Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Cth water efficiency laws, as those laws apply to the Cth.	The Commonwealth Regulator and other authorities and officers referred to in the applied provisions have the same functions and powers under the applied provisions as they have under the Cth water efficiency laws, as those laws apply to the Cth.	Functions are conferred within the Act itself.	Functions are conferred within the Act itself.
Offences	Under s. 51: A person commits an offence if: (a) the person is required to answer a question or produce a book, record or document under paragraph (2)(b); and (b) the person does not answer the question or produce the book, record or document Penalty: 6 months imprisonment.	ACT has substituted a fine of 60 penalty units in place of the Cth penalty of 6 months imprisonment. The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the applied provisions as if those provisions were a law of the Cth and not a law of the Territory.	Cth criminal laws apply as laws of South Australia in this context.	The relevant Cth laws apply as laws of the Territory in relation to an offence against the applied provisions as if those provisions were a law of the Cth and not a law of the Territory.	Queensland has substituted a fine of 100 QLD penalty units instead of 6 months imprisonment.	Cth criminal laws apply as laws of South Australia in this context.	Cth criminal laws apply as laws of Tasmania in this context.	Under s. 51, the penalty is a fine of 60 penalty units In addition: 39B False or misleading information or document Penalty: Imprisonment for 1 year or 60 penalty units. This section does not appear in the Cth Act but provisions to the same effect (except as to penalty) are included in Part 7.4 of the Criminal Code of the Commonwealth.	Under s. 51, the penalty is a fine of 60 penalty units

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Penalty units		Refer to Cth Act.	Refer to Cth Act.	Refer to Cth Act.	Penalties are expressed in QLD penalty units. The number is therefore different (i.e., 100 penalty units rather than 60 in the Cth Act).	Refer to Cth Act.	Refer to Cth Act.	Penalty unit has the same meaning as in the Commonwealth Act.	A penalty unit is the amount (in dollars) that is for the time being a penalty unit under s. 4AA of the *Crimes Act 1914* of the Commonwealth.
Period of registration	Section 26 allows for the scheme to set the period of registration.				Section 30(1) sets the period of registration as 5 years.			Section 30(1) sets the period of registration as 5 years.	Section 30(1) sets the period of registration as 5 years.
Modifications from Cth law		Imprisonment removed.	None found.			None found.	None found.		Section 7A on meaning of 'supply' in Cth is not included here.

5.1.8 Assessment of WELS Scheme design and relevance

In order to assess the WELS Scheme's design and relevance, the assessment criteria outlined in Table 9, were applied. The outcome of this assessment is demonstrated in Table 10.

Table 9: Assessment criteria for WELS Scheme design and relevance

Alignment	Requirement
Optimal	The WELS Scheme is critical to achieving reductions in household water consumption and the achievement of objectives in the National Water Initiative (NWI) through the communication and promotion of water-saving and water-efficient products. The WELS Scheme continues to add value and its design offers incremental benefit compared to other schemes. Ongoing improvements are consistently sought and implemented. The WELS Scheme complements and seamlessly interacts with other schemes. It is also a reliable requirement for other rebate or subsidy programs, with ample examples of this, when applicable (i.e., during droughts or water level shortages). The WELS Scheme is consistent across all state and territory regulations.
Managed	The WELS Scheme's design and objectives remain broadly relevant and aligned with the NWI, apart from some minor issues, for instance, shifts in product range, definition of objectives or alignment with other schemes. If there is duplication in the design of the WELS Scheme when compared with other schemes, it is minor. The WELS Scheme is suitable as a requirement for other rebate or subsidy programs, but minor issues need to be addressed for it to be accessibly and easily applied. There are also minor inconsistencies across state and territory regulations that are already being addressed. Corrective actions are either in planning or considered by stakeholders to be minimal.
Sound	The WELS Scheme design and objectives remain broadly relevant and aligned with the NWI, apart from some issues requiring adjustment based on stakeholder feedback or scheme comparisons. There is duplication in the design of the WELS Scheme when compared with other schemes, some of which is recommended to be reduced. In principle, the WELS Scheme is a sensible base as a requirement for other rebate or subsidy programs, although there are minor inconsistencies across state and territory regulations. Corrective changes to these are not yet all identified or planned for.
In transition	The WELS Scheme has limited relevance, its design somewhat duplicates other schemes and/or offers little alignment or benefit in the NWI achieving its overall objectives. The requirements for the WELS Scheme and its operations are covered in other schemes and the WELS Scheme is primarily a duplication of those. Some immediate corrective actions have not yet been identified in Regulator planning. Significant changes may be needed or are already in progress to use the WELS Scheme as a requirement for other rebate or subsidy programs. Major changes are required or are already in progress to address inconsistencies in the WELS Scheme across some or a few state and territory regulations.
Not meeting expectations	As the WELS Scheme and its operation duplicates other structures, and/or is not relevant to stakeholders, its design offers no additional value in achieving the objectives of the NWI over what is in place elsewhere. Changes may be required to the WELS Scheme objectives and/or product scope but corrective actions may not yet have been identified. The WELS Scheme is in major conflict with other schemes, and is not suitable as a requirement for other rebate or subsidy programs. There are major inconsistencies in the WELS Scheme across the majority of or all state and territory regulations.

The assessment presented here has been considered by applying the assessment criteria outlined in Table 10. It seeks to determine the rigour of the WELS Scheme's design by summarising the analysis of the findings above, and supporting the development of recommendations.

Table 10: Application of assessment criteria for WELS Scheme design and relevance

	Not meeting expectations	In transition	Sound	Managed	Optimal
The objectives of the WELS Scheme continue to remain appropriate					WELS
The design of the WELS Scheme continues to remain appropriate				WELS	
The WELS Standard continues to remain appropriate				WELS	
The WELS Scheme continues to be used as an eligibility requirement for other rebate or subsidy programs, and its use contributes to meeting the objectives of the WELS Scheme				WELS	
The WELS Scheme complements and interacts with other schemes			WELS		
Consistency of the WELS Scheme across state and territory regulations			WELS		
Explanation and supporting evidence	The majority of stakeholders interviewed considered that the WELS Scheme's objectives remained appropriate in the context of current government and market needs. However, several industry and state and territory government representatives shared interest in the third objective around promotion and whether the design of the WELS Scheme would be able to drive more efficiency savings across the country. Generally, stakeholders also viewed the current suite of the products under the WELS Scheme as requiring only minor shifts or changes. There were some concerns expressed around the design of the WELS Standard, the rate at which variations could be made, and the types of language used (i.e., 'could', 'shall' and 'may'). These would				

	require minor changes and corrective actions in planning and are considered by stakeholders to be minimal. The majority view, shared by all cohorts, was that there was opportunity to combine parts of the WELS Scheme with related schemes. Some stakeholders suggested utilising the ISO Standard when available rather than maintaining a separate, largely duplicated WELS Standard; this may not be a meaningful suggestion if the ISO Standard only offers high-level structure and a national standard is still required.

5.1.9 Conclusion

The objectives of the WELS Scheme remain appropriate, as does its relevance through its goal of reducing water consumption. A strength of its design is in its point-of-sale requirements for plumbing products and appliances, which are not incorporated in WaterMark. The labelling is recognised by consumers, primarily on appliances, and is somewhat influential in purchasing decisions, although the benefits to the consumer of investing in water-efficient products are not as obvious as those in their energy-efficient equivalents.

A key change that will improve the WELS Scheme's relevance for industry and, as a bi-product, consumers is a strengthening of alignment between the WELS Scheme, WaterMark, E3 and the National Construction Code. Aligning more with WaterMark for plumbing products and combining the WELS Scheme with E3 was the most frequent suggestion by stakeholders in interviews and submissions, with 32 people identifying some level of alignment. The benefits of alignment and the expected positive impact on industry and consumers have also become apparent following the review of relevant literature and resources.

Many stakeholders were of the view that WaterMark and the WELS Scheme should be combined for plumbing products, and the WELS Scheme and E3 combined for appliances. There was also feedback from consumers who were surprised that E3 and the WELS Scheme were not the same Regulator (in relation to appliances). This current duplication of effort across the various inter-related schemes appears to be contributing to industry frustration and an undermining of confidence in the WELS Scheme. Streamlining the schemes, and therefore mitigating the effort required by industry in regulation and compliance, will likely support the relevance of the WELS Scheme for industry.

The same appliances are tested under both E3 and the WELS Scheme and have similar energy and water efficiency labels. During stakeholder consultations it became apparent that industry widely misunderstood the fact that the WELS Standard (s. 8.2.2 and s. 9.2.2) sets testing to be determined under the conditions used for the energy consumption tests. Further, there are efficiencies that can be gained by incorporating E3 and the WELS Scheme under the same government department. Research and inputs during the Review identified that washing machines and dishwashers appear to have more in common with E3 and its associated product range than that of the WELS Scheme. In addition, neither appliance is within scope for WaterMark, which is a precursor for plumbing product WELS registration. Accordingly, enhancements in alignment across all schemes are recommended.

Under the original scope of the ISO introduction, which is still described on the Standards Australia website, stakeholders suggested that the ISO Standard, when available, be used in place of the WELS Standard. This is a future consideration that makes sense both from the point of view of manufacturers exporting internationally and for Australian importers. By utilising a common international standard, the overhead costs involved in the WELS Scheme maintaining a separate Australian standard can be removed. The WELS Regulator has indicated that the scope of the ISO has recently changed to be more high-level guidance. Therefore, replacing the WELS Standard

with the ISO equivalent may no longer be a meaningful suggestion, particularly if a national standard is still required. The revised scope of the ISO would need to be reviewed before a recommendation could be made.

KEY FINDINGS:

EFFECTIVENESS

5.2 Effectiveness

The objectives of the WELS Act are:

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

The Department has outlined that the WELS Scheme seeks to promote the adoption of efficient and effective water-saving technologies via two mechanisms.

1. Standardised information that allows for ready comparison between products, and more informed decision-making on water efficiency.
2. Financial savings on water bills for consumers, as a result of reduced water consumption (Water Efficiency Labelling and Standards Regulator, 2015a).

This Section discusses the overall achievement of the WELS Scheme against the objectives of the WELS Act. It does so by addressing three key questions including:

1. Does the WELS Scheme continue to add value by achieving its objectives under the Act?
2. Is the WELS Scheme successful in its population reach, including for diverse communities?
3. What is the accuracy and credibility of WELS labelling?

Note that these findings should be read in the context of the limitations outlined at Section 4. Conclusions have only been drawn where the feedback was consistent and validated from multiple sources.

5.2.1 Does the WELS Scheme continue to add value by achieving its objectives?

Alongside other contributing factors, including complementary schemes and external factors such as rising energy prices, the WELS Scheme is contributing to water efficiency. While water use is influenced by multiple factors – such as the environment (drought), policy (associated regulations and water conservation programs), behavioural changes, and technical innovation – this Section concludes that the WELS Scheme is continuing to add value by achieving its objectives under the Act.

In a self-assessment undertaken in 2019, the WELS Scheme reported its achievements as outlined in Figure 17: Image drawn from the Regulator Performance Framework 2018–19 self-assessment for the WELS Scheme.

Figure 17: Image drawn from the Regulator Performance Framework 2018–19 self-assessment for the WELS Scheme

Source: Department of Agriculture, Water and the Environment, 2019

The comprehensive replacement of household appliances with highly water-efficient appliances has been found to be able to reduce indoor water consumption by between 35–50% (Griffith University, 2009). This underscores the value of the overall focus of the WELS Scheme. In terms of its continuing value, it has been noted that:

> *the WELS Scheme and its associated measures are […] currently saving significant volumes of potable water in households and businesses across Australia… (Institute for Sustainable Futures, 2018, p. 71)*

The WELS Scheme has also been shown to have other consumer benefits such as savings in energy use for water heating, particularly when using natural gas and electricity. These benefits can, consequently, contribute towards greenhouse gas (GHG) emissions reductions and household and business cost savings (Institute for Sustainable Futures, 2018) (Fyfe, et al., 2015). It is estimated, for example, that consumer savings of $1.2 billion a year can be made to household utility bills (water, electricity, and gas) (Department of Agriculture, Water and the Environment, 2020).

State-by-state modelling was undertaken to explore GHG emissions across products such as water and heating with electricity and natural gas for showers, taps and whitegoods, along with emissions by utilities from providing water (Institute for Sustainable Futures, 2018). The 2018 report estimated the quantity of GHG emissions avoided as a result of the WELS Scheme was an annual reduction of 1.92 megatonnes (Institute for Sustainable Futures, 2018).

Research into the interaction of the WELS Scheme with other schemes has found it to be 'critical to a wide range of initiatives' (Institute for Sustainable Future, 2018). The WELS Scheme is referenced in 32 complementary policies, including 19 water-demand programs; 4 energy-management schemes; 6 building codes, regulations and rating schemes; and 3 relevant tenancy laws (Institute for Sustainable Futures, 2018). Under the Residential Tenancies legislation in Queensland, for example, tenants can only be charged for water consumption if the property is water efficient (Government of Queensland, 2008).

Some literature notes that reductions in water usage are an indicator of the better utilisation of existing infrastructure, thereby deferring the need for investment (Water Efficiency Labelling and Standards Regulator, 2015a) and providing more robust drought shock protection (Institute for

Sustainable Futures, 2018). However, the direct attribution of the WELS Scheme to these benefits is difficult to ascertain.

Plumbers represent a key group of consumers of WELS Scheme-accredited products. In 2017, the WELS Regulator consulted with industry and identified that better educating key users of the WELS Scheme is essential, particularly for plumbers (Water Efficiency Labelling and Standards Regulator, 2017).

> *Interactions between the Plumbing Code of Australia, WaterMark, and WELS requirements are confusing for the plumbing and building industry and their clients. This would be assisted by better interactions and common terms across legislation; the use of new mediums such as infographics and videos for presenting information; and a coordinated approach to education (Water Efficiency Labelling and Standards Regulator, 2017, p. 6)*.

The largest proportion of water savings comes from taps (Institute for Sustainable Futures, 2018). However, consumers identified that they were less likely to refer to, or even be aware of, water-rating labels when purchasing taps and spouts, with less than one in five referring to the label or star rating on these types of products when making a final decision (Quantum Market Research, 2014). Thus, a potential area of improvement would be a targeted campaign in relation to the sale of taps and spouts. There may also be an opportunity to identify improvements in general consumer understanding, particularly for those with low literacy levels. It is understood that more detailed information is being considered for inclusion in vocational training for plumbers (Water Efficiency Labelling and Standards Officials Group, 2020).

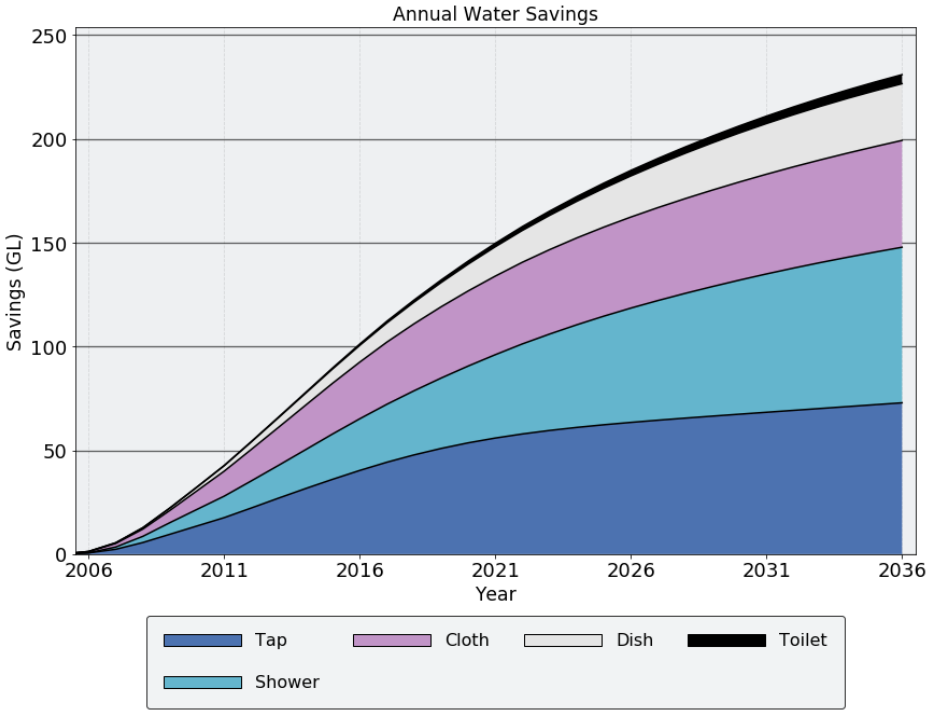
Objective 1 – Conservation of water supplies by reducing water consumption

A primary objective of the WELS Act is to conserve water supplies by reducing water consumption. This objective is being achieved by the WELS Scheme, through its public promotion of water conservation and mandatory minimum standards for product water efficiency. Whilst it is difficult to quantify the savings directly attributable to the WELS Scheme, a report conducted by the Institute for Sustainable Futures in 2018 found that:

> *the WELS Scheme and its associated measures are… currently saving significant volumes of potable water in households and businesses across Australia. These water-savings, particularly where hot water is saved, are also driving energy savings, which in turn can be shown to reduce GHG emissions… (Institute for Sustainable Futures, 2018, p. 71)*

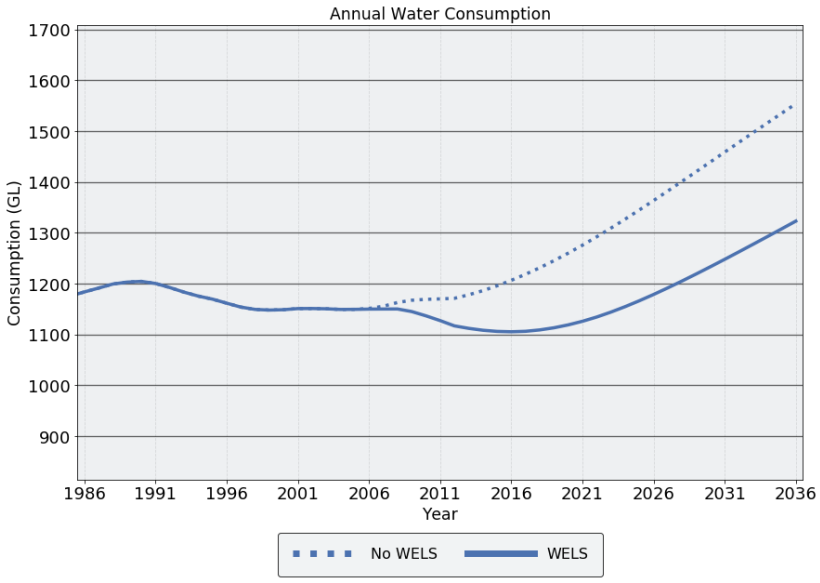
In the 2017–18 year, the estimated savings from the WELS Scheme and associated measures were 112 gigalitres per year across Australia (the equivalent of 21% of water supplied for all purposes in Greater Sydney). The Institute for Sustainable Futures (2018) has predicted that these savings will grow to 185 gigalitres/year in 2026 and 231 gigalitres/year in 2036. Currently, the WELS Scheme is saving each Australian on average 12.4 litres per day, which is predicted to grow to 19.5 litres by 2036 (Institute for Sustainable Futures, 2018). However, due to population growth and its associated impact on demand, additional measures to mitigate water use are still required to complement the WELS Scheme, particularly in those states with fast growing populations (Institute for Sustainable Futures, 2018).

Figure 18: Water-savings due to the WELS Scheme rated fixtures and appliances



Source: Institute for Sustainable Future, 2018

Figure 19: Total water consumption from WELS Scheme-rated products



Source: Institute for Sustainable Future, 2018

Some literature notes that reductions in water usage are an indicator of better utilised existing infrastructure, which defers the need for investment (Water Efficiency Labelling and Standards Regulator 2015) and provides more robust drought shock protection (Institute for Sustainable Future 2018). However, a quantifiable amount of direct attribution of the WELS Scheme to these benefits is difficult to ascertain.

For a third consecutive year, residential bills have remained steady with a national increase of 1% since 2017–18 despite the country being the driest since 1969–70 and having the fifth driest year on record. There was variation between the states and territories with WA utilities reporting an increase of 3.9% from 2017–18 and the ACT reporting a decrease of 4.0% (Bureau of Meteorology, 2019, p. 9).

> *In real terms, total capital expenditure on water supply and sewerage services by utilities increased by 5% ($187.8 million) from 2017–18. This was mainly driven by investments made by the Major water utilities. On a per property basis, all utility groups increased expenditure on the sewerage network. These increases have, however, been partly offset by the decreases the utility groups (except the Major utility group) have made in capital expenditure on water networks (Bureau of Meteorology, 2019, p. 9)*.

Additional consumer value added by the WELS Scheme

Consumer savings of $1.2 billion a year are estimated in household and business utility bills (water, electricity, and gas) (Department of Agriculture, Water and the Environment 2020a). In the 2018 Institute for Sustainable Futures report, it was predicted that, across Australia, each person is saving $42 per year due to the increase in water efficiency because of WELS Scheme-rated products. Modelling conducted by the Institute for Sustainable Futures indicates in their 2018 report showed that the predicted utility bill savings will grow to $81 per person per year across the country's entire population by 2036 and that this will equate to $35.6 billion in bill savings by the end of 2036–37, with $5.1 billion already saved to date (Institute for Sustainable Futures, 2018).

Objective 2 – Provision of information for purchasers of water-use and water-saving products

The intent of the WELS Scheme is to provide information to purchasers/consumers at point of sale. Evidence suggests that the WELS Scheme is achieving this objective. The labelling is everywhere across the country – in shops and online, in catalogues, promoted by other related industries, Regulators and utilities. Several initiatives were implemented throughout 2019–20 to promote the WELS Scheme to industry and the general public. These included two advertising campaigns launched in peak periods around Christmas 2019 and during the COVID-19 lockdown phase across Australia in June 2020.

For the campaign in June 2020, the WELS Scheme joined the ABCB in an advertising campaign to encourage Australian consumers only to buy products that comply with the WaterMark Certification Scheme and the WELS Scheme. The advertising campaign included eBay and programmatic advertising across a number of online platforms. In addition, Standards Australia released a promotional video for World Standards Day in October 2020, in which the WELS Standard 6400 was highlighted (Standards Australia, 2016a). Reference to the WELS Scheme and consumer water reduction also appeared on the 'Your Home' website (Australian Government, n.d.), and guidelines about the WELS Scheme were provided to builders through the ABCB (Australian Building Codes Board, 2017).

Other programs that promote the adoption of efficient and effective water-saving technologies by leveraging off the WELS Scheme include:

- financial rebates or discounts for technologies – for example, the Victorian Government Energy Saver program (which includes water efficiency) for households and businesses enables access to discounted energy-saving products and upgrades through accredited providers (State Government of Victoria, n.d.)

- information and education via water suppliers and other programs – for example, Smart Approved WaterMark, Icon Water and MidCoast Water have initiatives aimed at educating consumers and the public about the benefits of using and installing products related to the WELS Scheme (Herbert, Gutierrez-Schiefer & Philpot, 2017)
- the adoption of the WELS Scheme within the Commonwealth Government's Sustainable Procurement Guide – this seeks to provide practical assistance on how to consider environmental sustainability into procurement (Department of Agriculture, Water and the Environment, 2021).

Between 3–23 February 2021, 4,380 consumers completed a survey for the consumer advocacy group CHOICE to support their submission to this independent Review of the WELS Scheme. In that survey, 41% of respondents indicated that water efficiency is the most important factor when deciding which appliance to buy, with another 56% saying it was an important factor, and 93% recognised the WELS label (CHOICE, 2021). CHOICE highlighted that 'these results are very positive, suggesting that the current WELS Scheme is highlighting water efficiency to consumers and making it easier for consumers to make informed decisions' (CHOICE, 2021, p. 6). However, CHOICE also indicated that there 'remains a need to discourage products that use excessively high amounts of water from being sold in the Australian market' (CHOICE, 2021, p. 4).

According to CHOICE, the WELS Scheme is influencing market demand by 'successfully driving the market to produce more water efficient appliances'. This can be seen in the average amount of water a dishwasher uses per cycle, which has reduced from 35 litres of water per load in 2005 (when the WELS Scheme was established) to the current water per load of 9.21 litres of water (CHOICE, 2021, p. 12).

At least one submission from a large industry retailer indicated that they had seen a moderate increase in demand for higher rated products since 2015, while an industry stakeholder similarly claimed there had been significant shifts in product demands towards higher rated products in the same timeframe. Another industry stakeholder indicated that:

> *… from a consumer perspective, the WELS Scheme represents modern light-handed regulation. It does not limit consumers' choices but provides powerful and easily accessible information on which to base water-efficiency decisions. Rising prices across the water industry have provided an added incentive to consumers to save water. The WELS Scheme supports this by allowing them to make informed choices.* [Industry Stakeholder]

A contrasting view came from at least one industry stakeholder who claimed that 'very few consumers ask for water-saving product by the star rating', and that the WELS Scheme relies on salespeople pointing out the star rating to consumers. Another industry representative (who was a registrant) indicated that the WELS Scheme:

> *…continues to operate as another burden on consumers, suppliers and manufacturers, and subsequent 'after installation' effects that are now known through less water flow in drains, less water/pressure to efficiently operate hot water systems, and the increase in gases in all sewerage.* [Industry Stakeholder]

During interviews, two industry stakeholders indicated that they are unable to transfer pricing onto consumers directly, particularly for low volume products where the incremental price would be disproportionate against the value of the product (for example, a tap). It is acknowledged that the cost of registration is incorporated in product pricing but potentially not the cost incurred on individual product models.

Objective 3 – Promotion of the adoption of efficient and effective water-use and water-saving technologies

There is evidence to suggest that the WELS Scheme is supporting the promotion of the adoption of efficient and effective water-use and water-saving technologies. However, further enhancements could be made to the Scheme to support further alignment with this objective. This outcome has been influenced by complementary schemes, and external factors that have contributed to a reduction in water consumption, such as drought, and an increase in energy prices. Also, the effect of domestic savings on Australia's overall water usage (18%) is somewhat dwarfed by the impact on water consumption by industry and agriculture, usage which is significantly higher (Productivity Commission, 2017). Given the complexity and impact of so many external factors, previous reviews have observed that it is challenging to quantify and attribute water savings solely to the WELS Scheme (Institute for Sustainable Futures, 2018), (Fyfe, et al., 2015).

The WELS Scheme appears to be in the consciousness of consumers through its national consistency and ongoing presence since 2005. However, these reviews have shown that there are correlations between the WELS Scheme initiative and a reduction in water consumption (Institute for Sustainable Futures, 2018), (Fyfe, et al., 2015).

The WELS Scheme promotes the adoption of efficient and effective water-saving technologies via two mechanisms:

1) standardised **information** that allows for ready comparison between products and more informed decision-making on water efficiency

2) based on the choice of product and use, stakeholders can benefit from the reduction of water consumption and consequent **financial** savings on water bills (Water Efficiency Labelling and Standards Regulator, 2015), (Water Efficiency Labelling and Standards Regulator, 2015a).

There is evidence that efficient and effective water-saving technologies are being adopted, as indicated by the overall increase in registered products/technologies from 2006 to 2017 (Institute for Sustainable Futures, 2018). Furthermore, an analysis of the WELS database shows:

> *…a general trend towards more registrations of higher star rated products year by year. This trend to increased efficiency is true for all product types… this general trend towards more efficient registrations appears to be slowing for most product types in more recent years. This is particularly true for showers and toilets (Institute for Sustainable Futures, 2018, p. 26)*.

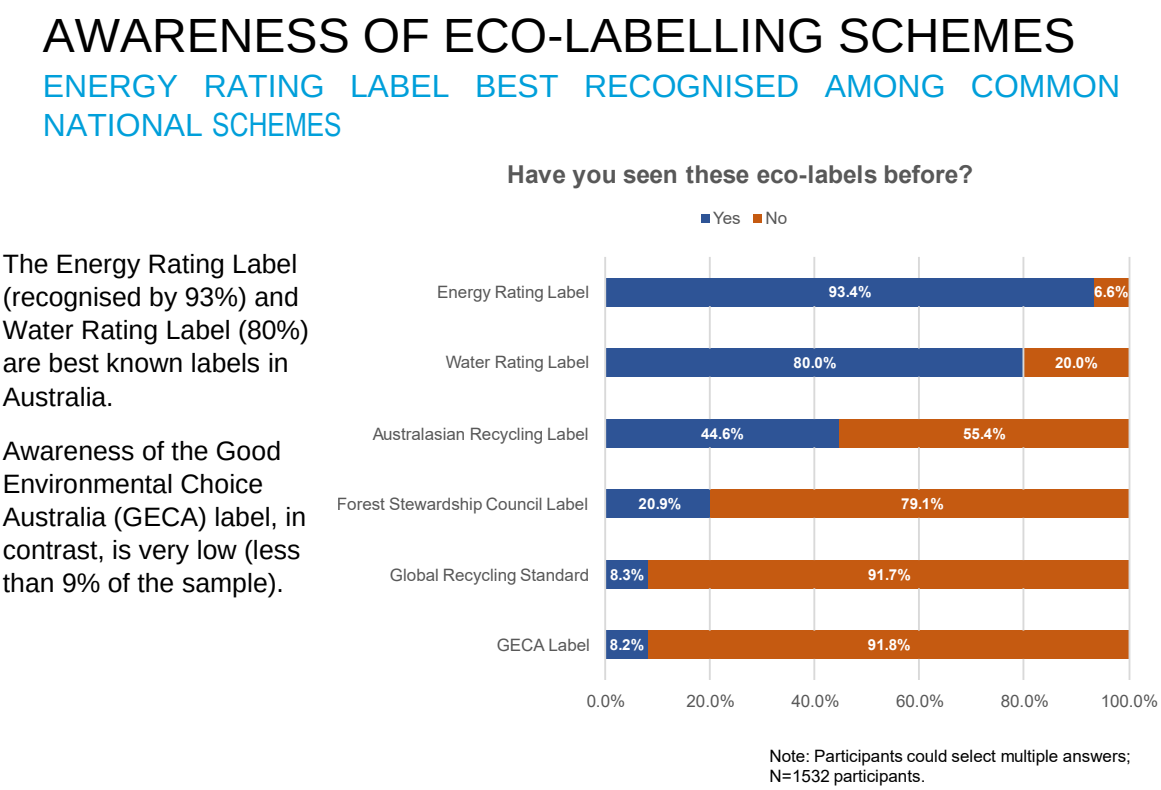
While this feedback is positive in terms of registrations, independent data on the proportion of registered products in the market against those not registered has not been estimated. The increasing registrations would imply that more water-efficient products are available. It has been noted, however, that there is an increasing supply of nonconformant shower systems from international manufacturers. Consumers are being given fraudulent information in relation to them. These products include showers without flow controllers or with substituted mechanisms, and flow controllers supplied separately and that use more water than claimed (Economics References Committee, 2018).

Research undertaken by BehaviourWorks Australia indicates that even though 'government sourced labels are the most trusted', most consumers do not consider the environmental information on products. Thus, labels need to be aligned with complementary interventions (Behaviour Works Australia, October 2020).

However, the visibility of the WELS label, and knowledge of it, does appear to be increasing. A recent survey by the BehaviourWorks Australia Waste and Circular Economy Collaboration, for example, examined awareness and trust in existing eco-labelling schemes, as one element of exploring consumer engagement with labels. It found that the WELS Scheme was the second 'best known' label after the energy rating label. (Behaviour Works Australia, October 2020). In contrast, this Review found industry stakeholders felt that the WELS Scheme was better known than WaterMark because there had been more publicity about it and the controls for the WELS Scheme were at the point of sale (Aither, 2018).

In comparing the WELS Scheme with E3, there was a sense that perhaps communication about the difference between the WELS Scheme and E3 could be improved. One Regulator stakeholder indicated: 'Most of the general public don't necessarily realise the WELS Scheme and E3 are independent of each other. It isn't uncommon to receive WELS Scheme-related queries during an E3 inspection.'

Figure 20: Awareness of eco-labelling schemes (n=1532 participants)



Source: BehaviourWorks Australia Consumer (eco)labelling Trial Report, October 2020

Interviewees surveyed for this Review indicated that labels were easier to interpret than the online presence of the WELS Scheme. Some respondents found that understanding the WELS Scheme and WaterMark databases, and the differences in the model numbers, was confusing. A government stakeholder, for example, indicated that 'when you walk into the shop, you can see the sticker. But when you go online, it is a bit more difficult to get that information'. By contrast, several industry and government stakeholders indicated that, while there was a perception of a general awareness around star ratings on washing machines and dishwashers, there appeared to be less awareness of these products on tapware. According to one stakeholder:

When I speak with friends about [the WELS Scheme], the only way that they recognise it is the star ratings. But they don't know about it for tapware, they recognise it on washing machines and similar items.

While a primary purpose of the WELS Scheme is to promote the adoption of efficient and effective water-use and water-saving technologies by influencing consumer behaviour through the use of labelling, there were varying views raised in stakeholder interviews as to the merit of labelling products. A range of stakeholders (predominantly from industry) indicated that the work of the WELS Scheme has a focus on industry, registration and compliance rather than on changing consumer behaviour. At least one industry stakeholder was of the view that the WELS Scheme is not influencing choice, as:

… aesthetics are still the main reason people make choices. There might be some environmental concerns but aesthetics are still the key driver of choice as well as a price point.

Industry stakeholders also emphasised the growing trend towards bespoke products, with one claiming that 'colour is everything nowadays. People want matte black and brushed nickel and the water rating isn't relevant'. By contrast, another felt that:

… from a consumer perspective, the WELS Scheme really helps make a choice… consumers are really driving the purchase of products, and knowing that they're saving water, that's also saving them money as well. If you took [the WELS Scheme] away, consumers would be making choices solely on price and I think that would be terrible for the industry.

Other industry stakeholders claimed:

… it has been a very effective and successful scheme…it encourages our members (suppliers) to remove less water efficient products from the market. It is doing a good job at putting more water efficient products onto the market and removing the low-hanging fruit of less efficient goods.

… we constantly and consistently use the WELS Scheme... every program that we run is based upon the WELS Scheme rating.

Another indicated that the WELS Scheme has an influence on infrastructure decisions. At least one industry stakeholder who works for a large manufacturer indicated that they are specifically producing products with the WELS Scheme in mind. This may indicate a recognition of influences in consumer behaviour resulting from the WELS Scheme. Another industry stakeholder was confident that people were considering the star ratings in their purchasing decisions, but not necessarily the related detail on the labels, stating that:

they [consumers] look at the stars and don't notice the numerical values. They tend to look at the stars for energy and water, then the price, then do the calculations. It used to be just price, but now it is all three.

This was substantiated by another respondent who observed that:

… price is still king, but with the label, they are more conscious now. There is a lift in environmental issues. Consumers are becoming more aware of these issues. [Industry stakeholder]

Another industry stakeholder said:

We know consistently still that price is the dominant factor, particularly with developers. Sometimes other things like education levels or socioeconomic factors [are important]. The weakness of the WELS Scheme is that it doesn't show the trade-off of

higher price for a more water efficient good. The value of water is not seen as significant enough hurdle/benefit to overcome the price area.

State and territory representatives saw the value in the WELS Scheme, with one state representative indicating that 'the WELS Scheme is a very important tool for Government to manage water usage and efficiency'. CHOICE surveyed 4,380 people in February 2021 and found 41% of people consider water efficiency the most important factor in appliance selection with 93% of people recognising and understanding the label (CHOICE, 2021).

Figure 21 shows that the increase in water efficient products and consumer priorities to conserve water have led to an increase in demand; between 30–60% identified some level of increase in demand for water-efficient products as a result of the WELS Scheme. 'Other industry' in Figure 21 refers to associations and standards groups. Across industry groups between 40–50% indicated that there was no change or that they had no opinion.

Figure 21: Survey findings – Consumer demand for water effective products, by industry type (n=24)

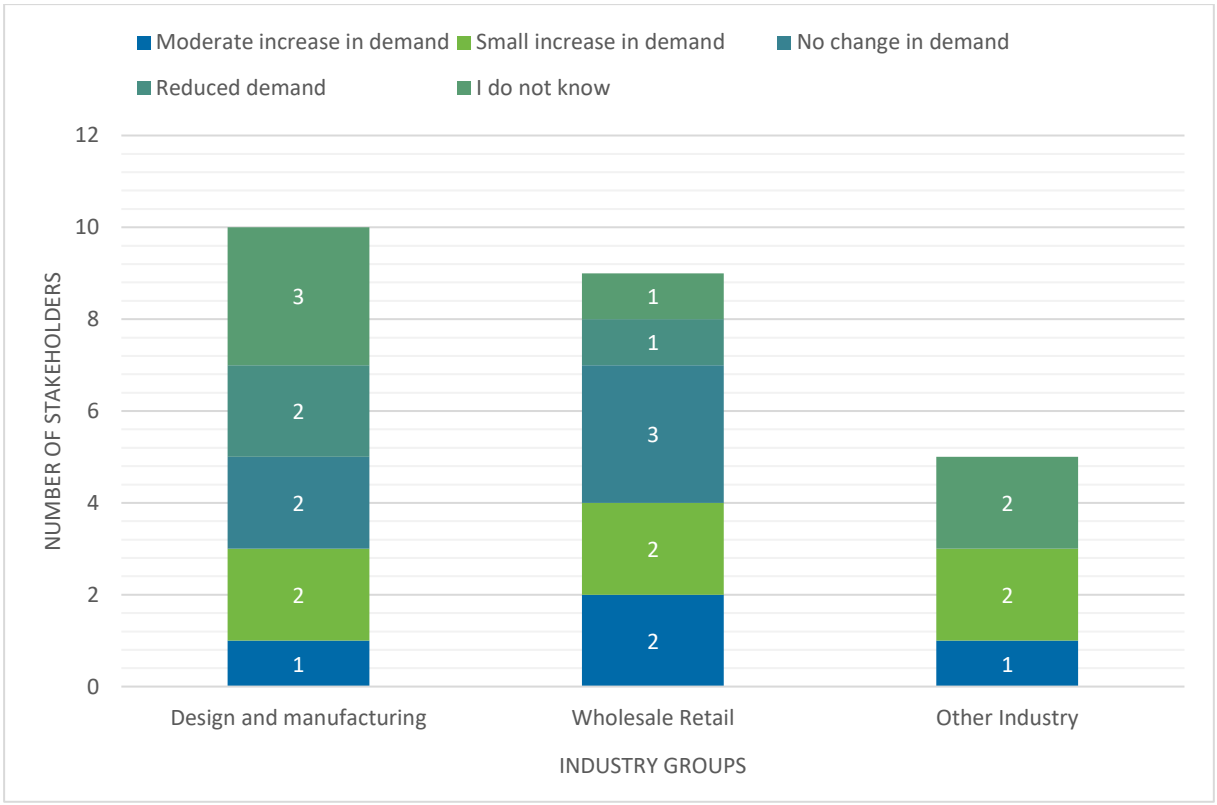
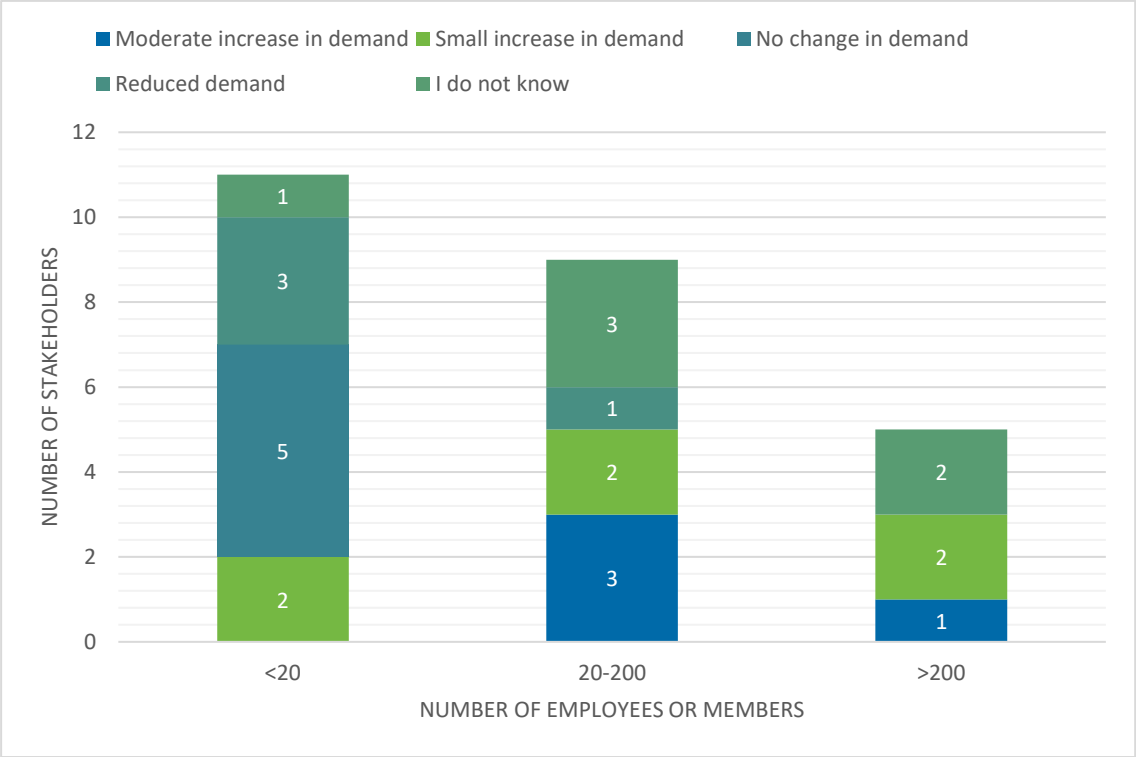


Figure 22: Survey findings – Consumer demand for water effective products, by industry size (n=25)



Some stakeholders felt the positive gains achieved from the WELS Scheme might be undermined if the flow rate coming out of products was too low, as this would leave consumers dissatisfied with the product. Others indicated that, at point of installation, flow controllers were being removed from products that had been tested to increase the flow rate, with one commenting 'they don't like wasting time filling a water bottle'.

The effectiveness of the WELS Scheme in influencing consumer behaviour should take into consideration this risk and mitigate it through appropriate design measures. One industry stakeholder indicated that:

> *consumers were complaining a lot about the showerheads. The restricted flow in the outlets has had an effect on hot water reduction systems. Sometimes it will reduce down to not working at all, because of the reduced flow in the continuous flow hot water system that is not required. The fix that a lot of plumbers recommend is removing the restrictors.*

This was echoed by another who claimed that:

> *… there's a YouTube video on how to remove your flow restrictor and get more pressure from your shower.* [Industry stakeholder]

While the amount of water used by a tap is dependent on the duration for which the tap is used, such undermining of consumer confidence in the WELS Scheme at the point of installation could also serve to undermine the objectives of the WELS Scheme.

5.2.2 Is the WELS Scheme successful in its population reach, including for diverse communities?

This Review has found that further research is required into understanding the way in which the WELS Scheme can best reach Australia's diverse populations and communities. These include our remote populations who may face barriers to accessing water, as well as those who identify as having a disability or those for whom English is a second or additional language.

WELSAG was established to support better engagement with industry and consumers. Despite the WELSAG meeting minutes from 2019 indicating that fact sheets about the WELS Scheme have been translated into Mandarin, there appears to have been limited investment beyond this in ensuring that information about the WELS Scheme reaches diverse populations. There have been rebate programs predominantly aimed at supporting vulnerable populations, but there do not appear to be any specific programs within the WELS Scheme targeted at supporting vulnerable populations.

As part of the WELS Scheme Review, the online survey asked, 'How well does the WELS Scheme reach diverse communities such as remote communities, people who identify as having a disability and stakeholders for whom English is not their first language?'

Across the three cohorts of industry, government and consumers, of those who offered an opinion, 37.5% of stakeholders thought it was very inclusive (3 of 8); one stakeholder (of 8) indicated that they thought it targeted most of the population; and 50% thought there were significant gaps (4 of 8). The remainder had no opinion. While this is only a small sample size, it does demonstrate a low level of confidence or uncertainty that the WELS Scheme is reaching diverse audiences.

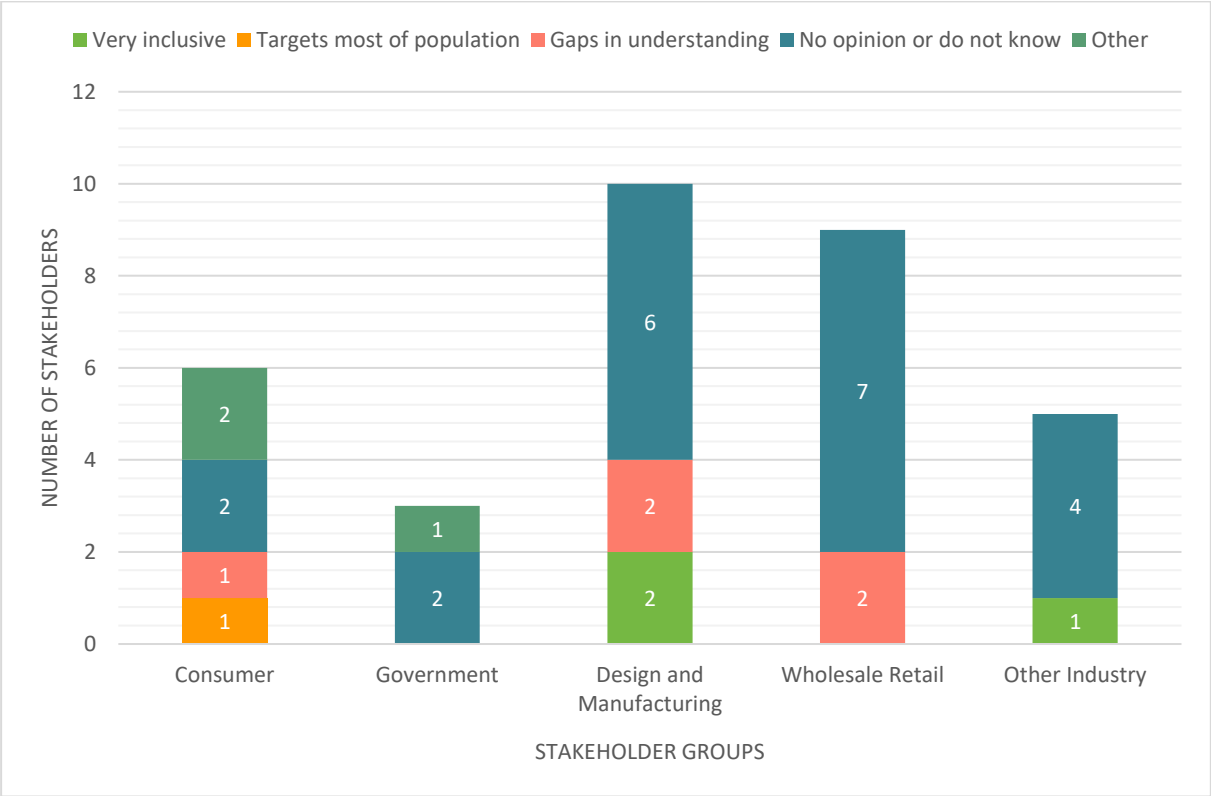
> *In dealing with remote indigenous communities their water requirements are different to that of other regions in Australia and these communities are not thought of in this Scheme due to the lack of technical knowledge and inflexibility of the WELS Scheme.* [Survey response]

With the advent of the *National Disability Strategy 2010–2020*, this Review highlights an important point to consider: namely, the need for 'strategies and performance indicators to ensure they address the needs of people with disability' (Council on Federal Financial Relations, p. 9).

Similarly, there is room to improve how the WELS Scheme relates to Aboriginal and Torres Strait Islander people. As the website for the Department notes:

> *Through their connection to and care for Country, Aboriginal and Torres Strait Islander people are vital partners in sustaining important environmental services. Partnering that involves Indigenous Australians offers unique opportunities to respectfully combine the strengths of traditional and other knowledge and practice, and to find avenues for achieving broader economic, health, social and cultural benefits (Australian Government, 2020a)*.

Figure 23: Survey findings – How well does the WELS Scheme reach diverse communities such as remote communities, people who identify as having a disability, and stakeholders for whom English is not their first language? (n=33)



'The concepts presented on a flow rate label are straight forward and clear with pictures, numerals and SI units of measurements. Digital reading aids / translators can help with online information. Phones have scanning ability for translation also so we don't see any issues with the present labelling methods.'

In terms of reaching diverse communities, 'the use of stars is an advantage and disadvantage. The stars lead to not having heavy text, which is great for people who may have reading disabilities. We could have lots of details around the cycles but we have people with difficulties comprehending English. We need it simpler for these people'

'WELS has a wide reach across Australia with the label recognised widely by all communities'

'I don't think the WELS Scheme reaches its direct trades and industry providers, let alone diverse or remote communities'

'From a disability perspective, tap design is different but the WELS ratings don't change'

'Likely to be large gaps in understanding, particularly for remote Aboriginal communities'

5.2.3 What is the accuracy and credibility of WELS labelling?

The AS/NZ 6400:2016 Standard relating to the rating and labelling of water-efficient products forms the basis for the rating and labelling of a range of products under the WELS Scheme. All products under the WELS Act have to be registered, rated and labelled according to the requirements of the WELS Standard. The specified products are:

- tap equipment
- fixed showers
- electric dishwashers
- clothes washing machines (including the dryer function of combination washers/dryers where they use water to dry a load)
- lavatory equipment
- urinal equipment
- flow controllers.

In 2014, research was commissioned by the Department to understand consumer awareness of the WELS Scheme water rating labels, the importance of labelling when making purchase decisions, and the usefulness of labelling (Quantum Market Research, 2014). Research interviews conducted with 1,536 consumers showed that the water rating labels served as a simple guide: interviewees generally had a clear understanding that more stars indicated that a given product is more water efficient.

In its submission to this Review, consumer group CHOICE indicated that 'the simplicity of the WELS Scheme is appealing and useful for consumers making decisions when purchasing water using appliances'. In a survey of 4,380 people conducted by CHOICE, 62% found the WELS labels very easy to understand, while another 31% of people found the labels somewhat easy to understand and 93% recognised the WELS label (CHOICE, 2021). However, only 21% of people believe they knew how much water their washing machine used in a typical wash cycle (CHOICE, 2021). This Review considers that the WELS Scheme could improve the accuracy through which it reflects the water efficiency of products by considering changes to the labelling of products and enhancing awareness of the WELS Scheme.

During consultation, stakeholders were asked how accurately the WELS Scheme reflects the water efficiency of products. One-third of consumers (33%) indicated that there were issues with reliability and accuracy, whereas 20% of designers and manufacturers and 38% of wholesale retailers indicated there were issues. Only 17% of consumers thought that the WELS Scheme reflects the water efficiency of products.

The majority of stakeholders interviewed did not comment on the WELS label design. Of those who did, most noted that the label did not need to be changed because it was well recognised, easy to understand, intuitive, and provided assurance that other requirements and standards were

met. This is supported by its similarities with the Energy Rating Label. The advantages of the WELS label design were well summarised by one industry stakeholder:

> *the fact that it looks similar to the Greenhouse and Energy Minimum Standards label doesn't hurt… Looking at the WELS label versus what is around the world and with other [schemes], I think it does the job. It isn't the prettiest label. The stars are fairly intuitive.*

Another stakeholder during interview simply said:

> *people have busy lives. WELS labels give people a quick understanding of how much water is used for certain products.*

Figure 24: Survey findings – How accurately do you think the WELS Scheme reflects the water efficiency of products? (n=29)

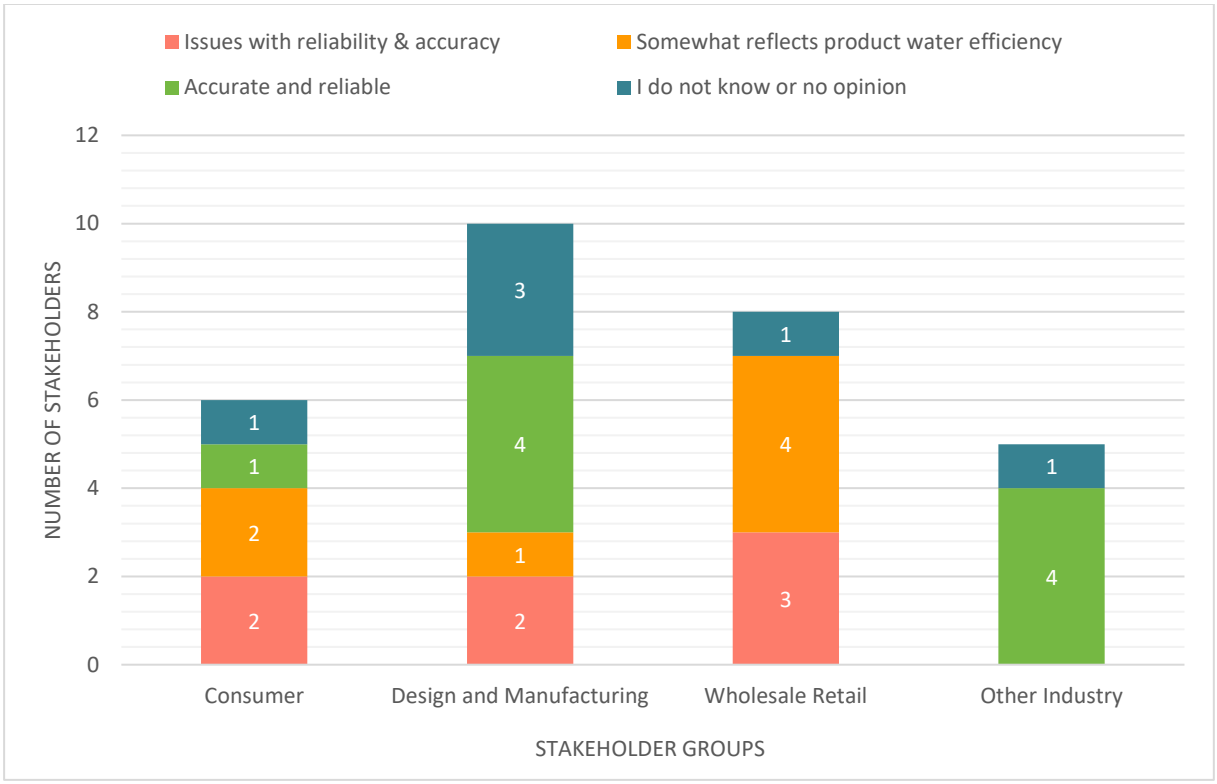
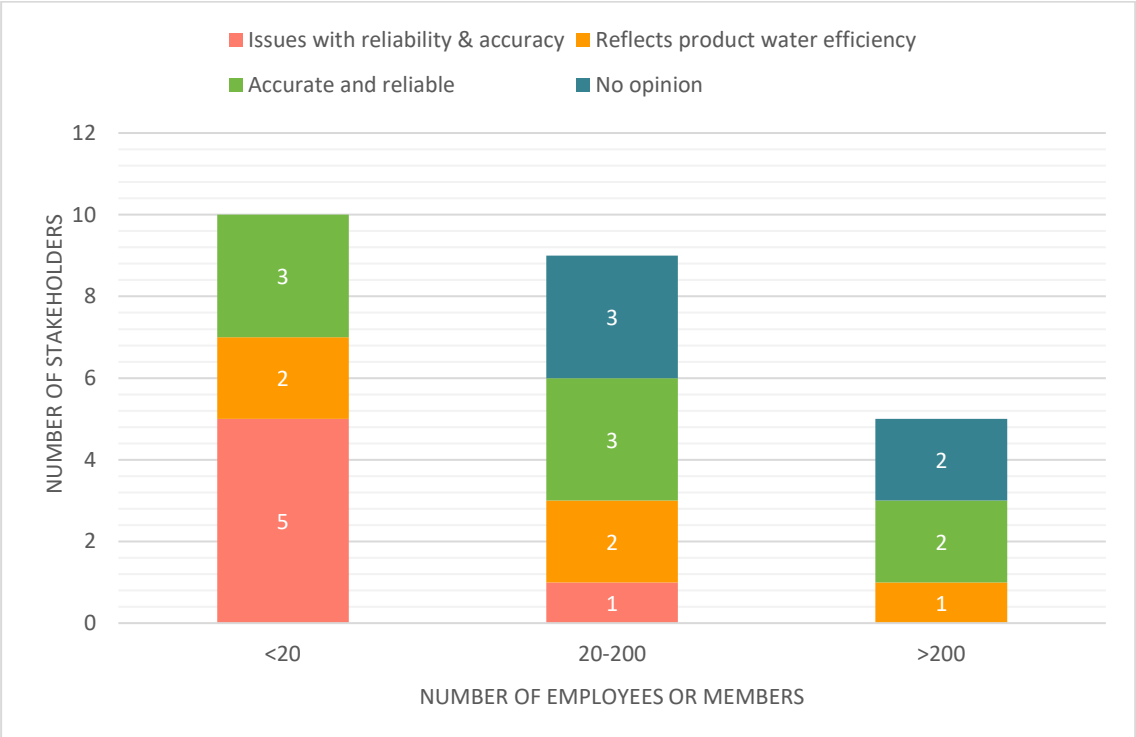


Figure 25: Survey findings – How accurately do you think the WELS Scheme reflects the water efficiency of products? (by industry size, n=24)

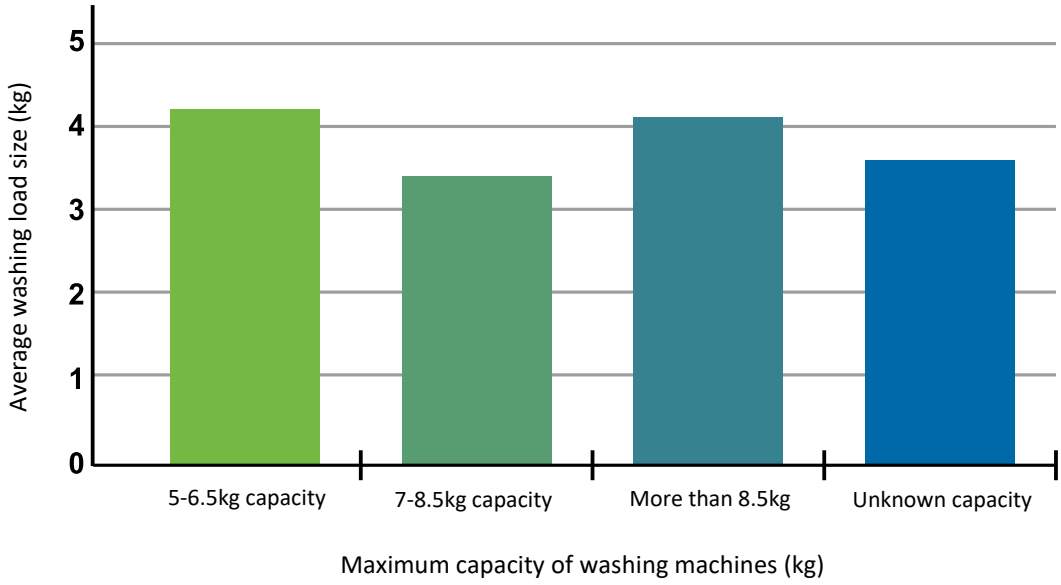


During the survey, consumers were also asked about the current labelling information. Although the number of responses was low and not a representative sample, there was a fairly even split across the consumer cohort as to the effectiveness of the labelling information.

Noting that this sample is too small to draw any conclusions, of the 10 consumers who responded to the survey, 33% (one-third) indicated they find out information on registered products by considering the label. Other information sources – including government websites, water utility providers, store information, and word of mouth – are relied on less than labels. Despite the visibility of the WELS label, concerns were raised during the Review about enhancements that could be made to support the label's accuracy and credibility.

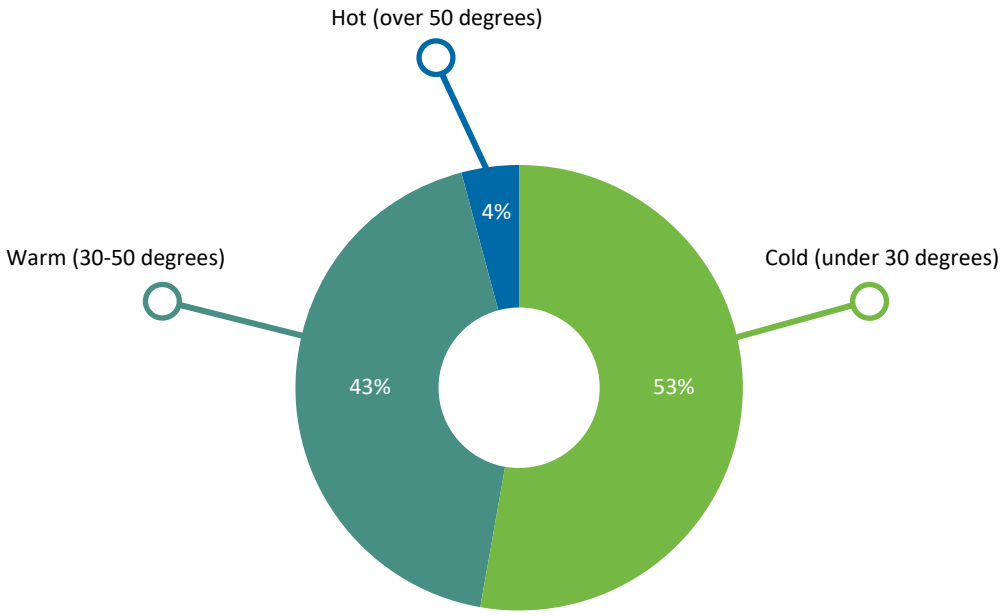
One industry stakeholder noted that product testing should reflect their use by consumers, for example, with washing machines. Australian Standard 6400:2016 '*Water efficient products — Rating and labelling*' sets out water usage and WELS Scheme star ratings. This standard requires that a full load of washing is run through at least a 40-degrees cycle to clean the clothes to certain criteria. The industry stakeholder found that the loads are rarely full and cycle selections can differ from the ones selected in testing. Thus, if products were tested in a way that more closely reflected how they are used, the product tests may provide a more realistic testing outcome. CHOICE found that 'the cycle is often a cotton, normal or water-saving cycle' and that its research shows that these selections are 'not what people always chose and that loads are rarely full' (CHOICE, 2021, p. 7).

Figure 26: Average washing load size



Source: CHOICE 2015 consumer survey (CHOICE, 2021)

Figure 27: Water temperature selection



Source: CHOICE washing machine survey 2016 (CHOICE, 2021)

In its submission, consumer group CHOICE made several recommendations in relation to labelling, including recommending that:

> *[the WELS Scheme] moves to incorporate partial load testing when assessing star ratings for clothes washing machines and washer/dryers; that the maximum amount of water that can be used for washing is also included on the WELS labels for washing machines and washer dryers; that minimum water usage standards be established for drying cycles on washer dryers; that IEC 60456 which assesses water use in partial loads, is used as the basis for the development of a new international standard through the ISO; that the water usage of eco modes is included on WELS labels for dishwashers (CHOICE, 2021, p. 5)*.

During interviews for this Review, an industry stakeholder indicated that:

> *the star rating can be misleading for commercial or performance-based products. Often a consumer will just think the more stars the better but, in terms of performance, if a certain amount of water is required to perform a certain task or function than a product that takes longer to accomplish this isn't really a 'better rated' product.*

Several stakeholders indicated that the program on which the testing took place should always be reflected in the label to inform consumers. One stakeholder commented that 'if it shows it's water efficient but it uses a four-and-a-half-hour program, they're making assumptions on the star rating'. Another indicated that the current labelling scheme does not adequately reward efficiency.

According to one industry stakeholder, the weakness of the WELS Scheme is that:

> *it doesn't show the trade-off of higher price for a more water efficient good. The value of water is not seen as a significant enough hurdle/benefit to overcome the price.*

During interviews, a number of stakeholders raised concerns about the star-rating system on the labels. One stakeholder indicated that the 'difference between star ratings on tapware is so small, that it is hard to quantify'. Another stakeholder indicated that if there was a minimum star level 'water guzzling machines' would no longer exist. This was reflected by another stakeholder who pointed out that although the label is intuitive, the removal of 1- and 2-star rated products altogether could have a greater impact, and that star-ratings which align with the plumbing code (particularly for shower-heads) would be more appropriate. This is planned with the 2022 PCA /NCC updates and also in proposed amendments to the 6400 Standard currently underway.

5.2.4 Assessment of the WELS Scheme's effectiveness

Overall, the WELS Scheme has been effective and this Review highlights that alongside its associated measures, it has saved water (and in some cases driven energy savings across Australia), supported the promotion of the adoption of efficient and effective water use and water-saving technologies and provided information for purchasers. The Scheme could be further enhanced by amending the label to expand its reach and impact and by supporting increased communication in relation to the Scheme.

In order to assess the WELS Scheme's effectiveness, the assessment criteria outlined in Table 11, were applied. The outcome of this assessment is demonstrated in Table 12. For clarity in this Review, effectiveness and efficiency of the WELS Regulator registration and compliance processes are captured together in the Efficiency and Cost Section at 5.3.

Table 11: Assessment criteria for WELS Scheme effectiveness

Maturity rating	Requirement
Optimal	Evidence outlined in the Review suggests that the WELS Scheme is one of the most effective water-efficiency schemes, clearly contributing to water conservation and the promotion of water-saving and water-efficient products for households. The WELS Scheme adds value to the entire Australian population through water and non-water benefits to stakeholders. Stakeholders categorically attribute water consumption savings.
Managed	Evidence suggests that the WELS Scheme is a reasonably effective scheme, with evidence of some contribution to water conservation and the promotion of water-saving and water-efficient products for households. It may be difficult to attribute success and savings to the WELS Scheme, and the WELS Regulator may not actively review its benefits to stakeholders. However, some data exist showing that the WELS Scheme is valuable and stakeholders are positive about the effects of the Scheme on water conservation.
Sound	Evidence suggests that the WELS Scheme contributes to water conservation and the promotion of water-saving and water-efficient products for households; stakeholder opinions reinforce this. It may be difficult to attribute success and savings to the WELS Scheme and the WELS Regulator may not actively review its benefits to stakeholders; data exist demonstrating that the WELS Scheme remains valuable with some improvements necessary to optimise its effectiveness.
In transition	From a stakeholder perspective, the WELS Scheme has significant gaps in delivering results against objectives, with evidence either showing no water conservation benefits or no data available. The WELS Scheme is thought to be less effective than similar schemes.
Not meeting expectations	From a stakeholder perspective, the WELS Scheme cannot be readily described as effective. It has little or no effect on the conservation of water and is delivered in a way that adds no value to the industry and consumer stakeholders with whom it interacts. There are significant areas of improvement identified.

When applying the findings of this Review to these criteria, the following conclusions are made in terms of where the WELS Scheme performance lies. A short summary is given in Table 12, including the key points from the findings identified.

Table 12: Application of assessment criteria for WELS Scheme effectiveness

	Not meeting expectations	In transition	Sound	Managed	Optimal
The WELS Scheme continues to add value by achieving its objectives under the Act (overall assessment)				WELS	
The WELS Scheme continues to conserve water by reducing water consumption				WELS	
The WELS Scheme continues to provide information for purchasers of water-use and water-saving products				WELS	
The WELS Scheme continues to promote the adoption of efficient and effective water-use and water-saving technologies			WELS		
The WELS Scheme is effective in reaching diverse communities		WELS			
Labelling associated with the WELS Scheme is effective in terms of its accuracy and credibility			WELS		
Explanation and supporting evidence	Alongside other contributing factors, including complementary schemes and external factors such as rising energy prices, the WELS Scheme and its associated measures are contributing to water efficiency. Previous research has indicated that the WELS Scheme and its associated measures are saving significant volumes of potable water across Australia (Institute for Sustainable Futures, 2018, p. 71). While water use is influenced by multiple factors – such as the environment (drought), policy (associated regulations and water conservation programs), behavioural changes, and technical innovation – this Section concludes that the WELS Scheme is continuing to add value by achieving its objectives under the Act. Evidence that efficient and effective water-saving technologies have been adopted is indicated by the overall increase in the number of registered products/technologies from 2006 to 2017. As well as the value offered to the broader population, the benefits of water efficient appliances also				

	Not meeting expectations	In transition	Sound	Managed	Optimal
	reduce energy consumption lowering power bills and carbon footprints for consumers. The Review found that the WELS label is recognised and the star design is easy to interpret, however the ability for consumers with diverse backgrounds to understand and access information is largely unknown. Further research is required about the way in which the WELS Scheme is reaching diverse communities in Australia. Engagement between the WELS Regulator and consumers has matured and other agencies and local government departments are now also communicating to consumers through their own initiatives and schemes. Visibility of the WELS label appears to be increasing as does knowledge about it. However, it was suggested that enhancements could be made to the label to support its accuracy and credibility, particularly as interviewees indicated that labels were easier to interpret than the online presence of the WELS Scheme. Additionally, co-ordinated communication to target overall consumer behaviour could be facilitated through continuing to strengthen joint advocacy and promotion of water conservation with other groups.				

5.2.5 Conclusion

A report conducted by the Institute for Sustainable Futures in 2018 found that:

> *the WELS Scheme and its associated measures are… currently saving significant volumes of potable water in households and businesses across Australia. These water-savings, particularly where hot water is saved, are also driving energy savings, which in turn can be shown to reduce GHG emissions… (Institute for Sustainable Futures, 2018, p. 71)*

The report from the Institute for Sustainable Futures considered measures that are associated with the WELS Scheme in its modelling including other water efficiency programs, regulations and initiatives that have worked in concert with the Scheme. It is therefore difficult to ascertain the full extent to which a reduction in water consumption can be solely attributed to the Scheme.

Further, the Scheme should also be considered in its broader context including alongside its contribution when compared to the overall changes brought about by multiple water-saving initiatives, prevailing droughts and floods, and the contribution of household product savings compared to other influences such as building designs and consumer use of household products. Whilst a focus of the WELS Scheme is on household water consumption, it is also important to note that agricultural and commercial water use are also significant consumers of water. Notwithstanding this important context, the findings from the report conducted by the Institute for Sustainable Futures of the savings made by the WELS Scheme and its associated measures including that "it is currently saving 12.4L per person per day across Australia" are testament to the effectiveness of the Scheme.

There are also improvements that can be made to the design of the WELS Scheme and the WELS Standard to streamline the contributions they can make to water conservation. In addition, there are opportunities for the WELS Scheme to strengthen the promotion of water-saving products and water efficiency through communication, particularly to consumers.

The objectives of the WELS Act relating to this include:

- providing information for purchasers of water-use and water-saving products
- promoting the adoption of efficient and effective water-use and water-saving technologies.

These two objectives provide the framework for communication to consumers, but with their significant overlap they could possibly be consolidated into one objective. Alternatively, their scope and expectations could be clarified to provide greater certainty in relation to their administration.

Further consideration could be given to understanding consumer behaviour in order to target communication campaigns that influence water use beyond product selection. For example, even though the largest proportion of water savings comes from taps (Institute for Sustainable Futures, 2018), consumers identified that they were less likely to refer to, or even be aware of, water-rating labels when purchasing taps and spouts, with less than one in five referring to the label or star rating when choosing these types of products (Quantum Market Research, 2014).

For WELS products where consumer discretion in water use is high (for example taps and showers), information for purchasers of water-use and water-saving products could be enhanced by further communication aimed at impacting water consumption. This communication could also target specific populations, including those from diverse backgrounds.

The WELS Regulator is in a position to support communication more broadly around the appropriate use of products in the WELS range to promote water efficiency – for example, by encouraging consumers to turn taps off or ensure washing machines have full loads – and to discourage products that use 'excessively high amounts of water from being sold in the Australian market' (CHOICE, 2021).

There are also opportunities for further reducing water consumption by modifying product labelling to provide better information for purchasers on water-saving products. The consumer value of incremental efficiencies within the current product range, and the value to industry of registering at a higher rating, are largely unquantified. The choice of products, and the application of a progressive star rating and/or minimum standard, should follow a decision-making process in which the value in expected water savings is compared to the cost of implementing and maintaining this product within the WELS Scheme.

EFFICIENCY AND COST

5.3 Efficiency and Cost

This Section discusses Regulator and process efficiency and costs by addressing the following key questions:

- Does the WELS Scheme meet benchmark principles of efficient regulatory practice?
  - How appropriate and effective are the current mechanisms for industry engagement on the WELS Scheme?
  - How reasonable is the compliance burden on industry?
- Is the funding model and cost of the WELS Scheme appropriate and adequate?
  - How would any changes in product scope be funded?

Note that these findings should be read in the context of the limitations outlined in Section 4. Conclusions have only been drawn where the feedback was consistent and validated from multiple sources.

5.3.1 Does the WELS Scheme meet benchmark principles of efficient regulatory practice?

The second independent review of the WELS Scheme (Water Efficiency Labelling and Standards Regulator, 2015) considered the Scheme to be largely efficient. Over the past five years, its engagement with industry, government and other Regulators, in conjunction with the planned ICT upgrade, also illustrate a positive approach to improving efficiency. This is critical to supporting a clear understanding of the objectives of the regulatory regime thereby improving efficiency. The ICT upgrade provides an opportunity to identify further opportunities to improve efficiency, which could be enhanced by collecting baseline data relating to the current performance of the WELS Scheme before implementation of the ICT upgrade to quantify subsequent improvements in the future.

The WELS Regulator has implemented both a Compliance and Enforcement Strategy (2018–20) and Policy, which reports to WELSOG, and plans to incorporate information about the WELS Scheme and its relevance to industry into formal training courses. This supports clarity of understanding of the objectives of the WELS Scheme and lends itself to risk-based approaches.

This Review assesses efficiency against an assessment framework, developed from the Better Practice Guide (Australian National Audit Office, 2014), that can be applied to the WELS Regulator. Given that the assessment framework includes stakeholder engagement and process efficiency, this Section incorporates those Review questions.

The dimensions assessed in this Section of the Review, which are detailed in Section 5.3.3, include the following:

- defining outcomes and priorities – Regulators and stakeholders should have a clear understanding of the objectives of the regulatory regime; objectives should be clearly outlined in legislation, legislative instruments or supporting documents and communicated to stakeholders
- a risk-based approach to regulatory administration should include:
  - the promotion of a risk-based and integrated management culture and an approach to risk management that is integrated into strategy, planning, decision-making and processes
  - risk monitoring and regular reviews with organisational responsibility allocated, sharing of information, and adoption and management of mitigations

- the education of officers around risk-based policies and procedures

- supporting effective stakeholder relationships – the WELS Regulator should:
  - promote two-way engagement and communication
  - provide accessible information
  - monitor and assess the outcomes of communication
- current process efficiency,[3] including burden on industry – should include:
  - monitoring and management using internally developed indicators of effectiveness and efficiency for internal and external accountability, including in financial management
  - periodic reviews of stakeholder expectations
  - external stakeholder performance perceptions as well as the regulatory burden
  - continuous emphasis on efficient processes to reduce duplication, reworking and delays, in this case in the WELS administration[4]
- effective information management; measuring, reporting and evaluating regulatory performance and continuous improvement; transparency and accountability should include:
  - the management of data according to requirements
  - mechanisms to access data for timely decision-making
  - the maintenance of an evidence base of documentation for any decision-making, the standards of which are well understood by staff
  - the development and maintenance of processes to handle conflicts of interest, disputes and resolution processes, along with regular monitoring of complaint handling that includes identifying the nature of complaints and internal review outcomes
- Regulator capability – should consider:
  - periodic reviews of training, retention and recruitment plans to target efficient regulatory management (as well as effective administration)
  - periodic assessment of performances, including of service providers.

Defining outcomes and priorities

As defined in Section 5.1 of this Review relating to Design, the objectives of the WELS Act are clear and publicly accessible. In its objectives, the WELS Act effectively outlines the outcomes and priorities of the Scheme. There was some input from stakeholders looking for clarity on the extent to which the WELS Scheme works with other water usage schemes and how it contributes to national water consumption. Other points requiring clarification include how the objectives interact with each other, and the extent to which the WELS Regulator leads the promotion of water efficiency with the public. Given the maturity of the WELS Scheme, other organisations are now comfortable with referencing it in their own programs, indicating that a range of groups, beyond the WELS Regulator, see value in its objectives and priorities. An example of this is the Sustainable

[3] This dimension has been added for the purposes of this Review's framework.
[4] This dimension has been added for the purposes of this Review's framework.

Procurement Guide (Department of Agriculture, Water and the Environment, 2021), building codes and some state-based water initiatives all of which are referencing the WELS Scheme.

Risk-based approach to regulatory administration

A risk-based approach to regulatory administration was recommended in the 2015 Review (Water Efficiency Labelling and Standards Regulator, 2015a) and accepted by the Department in 2016 (Department of Agriculture and Water Resources, 2016). Both the WELS Regulator's Compliance and Enforcement Strategy and Policy (the Strategy) (Water Efficiency Labelling and Standards Regulator, 2017a) include a reference to this. In its self-assessment, the Regulator has indicated that, in undertaking the Strategy's objectives, it 'adopted a risk-based approach to regulation where feasible and supported by evidence'. This means that its 'inspection regimes may vary with the risk of a regulated activity' (Department of Agriculture, Water and the Environment, 2019).

The Better Practice Guide (Australian National Audit Office, 2014) suggests that a risk-based approach to regulatory administration includes:

- the promotion of a risk-based and integrated management culture and approach to risk management, which is integrated into strategy, planning, decision-making and processes
- risk monitoring and regular reviews with allocation of organisational responsibility, sharing of information and adoption and management of mitigations
- educating officers around risk-based policies and procedures.

There was little evidence in the Review to indicate that the WELS Regulator was applying a risk-based approach to exercising its regulatory functions, including registration and the prioritisation of product and industry checks.

By comparison, the WaterMark Product Certification Scheme includes risk-based registration processes. It assesses the level of testing required based on the risk of the product in failing to meet requirements, a consideration of accreditation under international schemes and standards, and any history of problems and possibility of non-compliance. Note that this is consistent with recommendations from CHOICE in 2018.

> *International test results should be able to be used for products that do not need to be tested in region-specific conditions* (CHOICE, 2018).

The WaterMark assessment has a 'design appraisal' incorporated into it to judge whether the design of products like taps are likely to impact on its certification criteria (CertMark International, 2016). One possibility for the WELS Scheme could be that a similar design appraisal be used in determining test sampling for WELS products, for instance, testing the tap with the shortest and longest spout rather than the entire range to determine a star-rating.

The WELS Regulator is working with industry to build educational capacity about the WELS Scheme in a number of ways, including having input into vocational education courses and through WELSAG. There are a range of opportunities for enhancing the WELS Scheme through education that have been identified during the course of this Review, including for instance, addressing industry's misunderstanding that E3 and the WELS Scheme have different test cycles for washing machines and the recurring issues with rejected and/or deficient applications (68% of new applications in 2019-2020). By emulating the way in which E3 annually reviews target areas for compliance, publishes the results and aligns them with data and education strategies, the WELS Scheme could ensure that its compliance and learning loops are data-driven and proactive in reducing issues over time.

Some industry feedback received by this Review identified that the effectiveness of compliance and enforcement could be improved by strengthening the online sales compliance checks (which is already identified within the Strategy), and by providing assurance to industry that fraudulent submissions are being identified and addressed. A civil action for alleged non-compliance with the WELS Act was listed before the Federal Court during the course of this Review. Civil proceedings are progressing against four companies and their sole director, and the Federal Court is considering whether the sole director contravened the Act by advertising products that were not registered or labelled in accordance with the WELS Scheme. The WELS Regulator has stated publicly that:

> *compliance with WELS [Scheme] requirements (is) vital to maintain confidence in the credibility and reliability of the Scheme. It ensures accurate information is provided to consumers about products… compliance is also important to ensure the costs of the [WELS] Scheme are shared fairly across industry participants who must pay registration fees* (Waterrating.gov.au, 2021).

The E3 program provides an annual workplan for compliance and enforcement, one which highlights the annual priorities and identifies where results will be published (GEMS Regulator, 2020). This is an area that could be combined with the WELS Scheme when targeting the same products. It is also an example of how short-term risk-based planning could be implemented and communicated.

While risk-based aspirations are included in the Strategy, and in reporting progress through to WELSOG, there was little evidence of any risk-based decision-making in shorter-term compliance planning or decision-making that would translate into annual targeted and communicated priorities. The last national field-based compliance program was in 2018 for the 'New-Build' program, and in 2021, representatives of the WELS Regulator travelled to South Australia at the request of a local manufacturer. To support this work, the Regulator is proposing national retail and building inspection plans that address the points made here.

Feedback received during one industry interview was that the WELS Scheme's testing regime often takes the most conservative approach. While stakeholders understand that testing is required for all products where efficiency may be affected, some found it overly prescriptive:

> *'WELS' compliance is through the book, while CABs does their compliance through a more risk-based approach.* [Industry stakeholder]

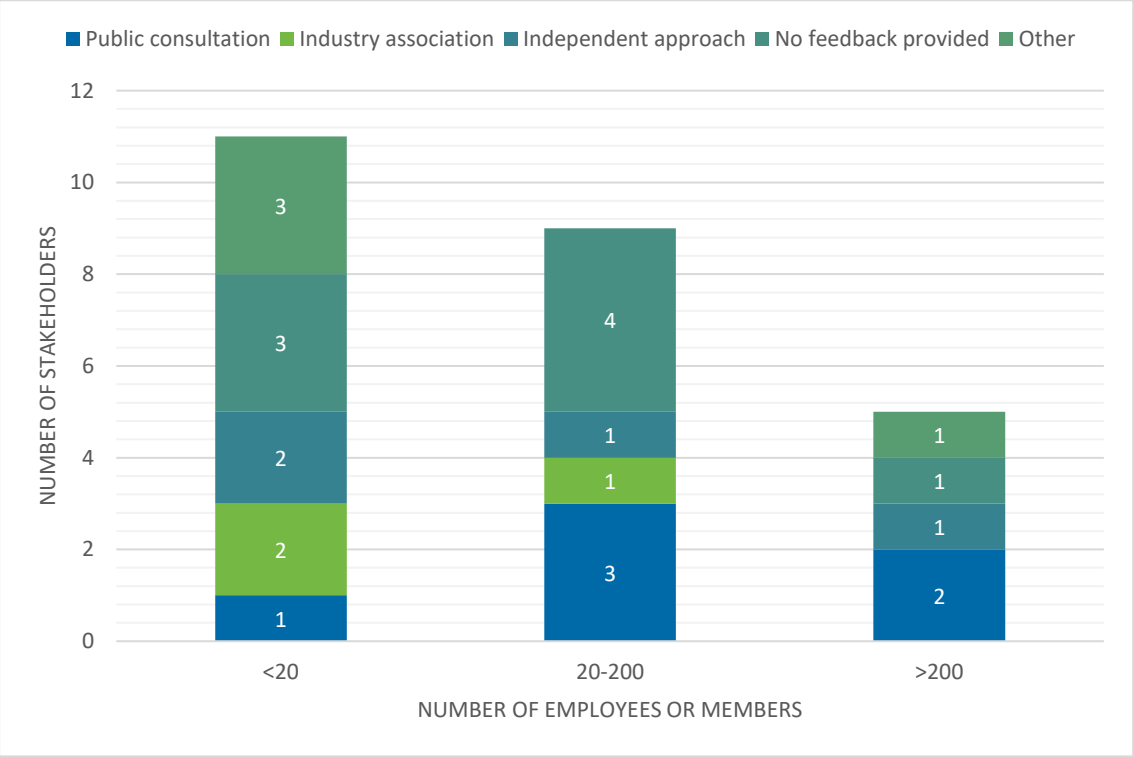
There is a significant effort within the WELS Regulator to work with online retailers such as eBay to address any of the key risks identified during 2017's Compliance Strategy development. In 2020, Regulator and industry stakeholders identified that online sales, in eBay and other retailers, have remained a priority over the three years of implementation. Analysing non-compliance and addressing these findings could be a way of prioritising and building efficiencies into, for instance, application processes integrating WaterMark registrations with the WELS Scheme, while the use of common product numbers and references would enable the integration of systems and comparison in real time.

Effective stakeholder relationships – How appropriate and effective are the current mechanisms for industry engagement on the administration of the WELS Scheme?

The WELSAG was set up to allow communication between the Regulator and industry, with a Terms of Reference and a membership consisting of 19 industry and government representatives and the Regulator. However, the 2015 Review (Water Efficiency Labelling and Standards Regulator, 2015a) suggested that the WELS Regulator minimise formal WELSAG meetings and instead increase industry fora in a bid to reach more stakeholders (recommendations 4.1 & 2). These recommendations were accepted in principle. The 2015 Review also identified that increasing attendance at industry fora would be beneficial in terms of industry being able to raise concerns, and for new requirements, processes and information to be communicated to them (Water Efficiency Labelling and Standards Regulator, 2015a).

Current industry engagement is carried out through public consultations (including five-yearly reviews), compliance events such as the 'New Build' event in 2018, the InkWELS newsletter, the WELS Scheme website, WELSAG and ad hoc industry fora. In addition, the interviews and submissions analysed for the purpose of this Review identified that interactions with industry have also occurred through professional associations and test laboratories (Water Efficiency Labelling and Standards Regulator, 2015a). Although only a small sample size, this Review found minimal differences in how small, medium and large industry participants communicate with the WELS Regulator across these mechanisms.

Figure 28: Survey findings – Communication mechanisms used by industry size (n=24)



The WELS Regulator in collaboration with the ABCB also led two advertising campaigns, at the end of 2019 and in June 2020, to raise awareness and remove misinformation for people in COVID lockdown buying products online and for industry. Further, Standards Australia released a promotional video for World Standards Day in October 2020 and the WELS Standard 6400 formed a highlight of that promotion (Standards Australia, 2016a). Any additional communications in 2020, including visits to manufacturers and education (like the plumbing accreditation course)

with industry groups, were seen as a positive step. For example, the WELS Regulator contributed articles to *Plumbing Connections*, an HIA industry magazine, and to *WaterMatters,* a departmental initiative with a distribution list of more than 2000 recipients, as well as content for Sydney Water.

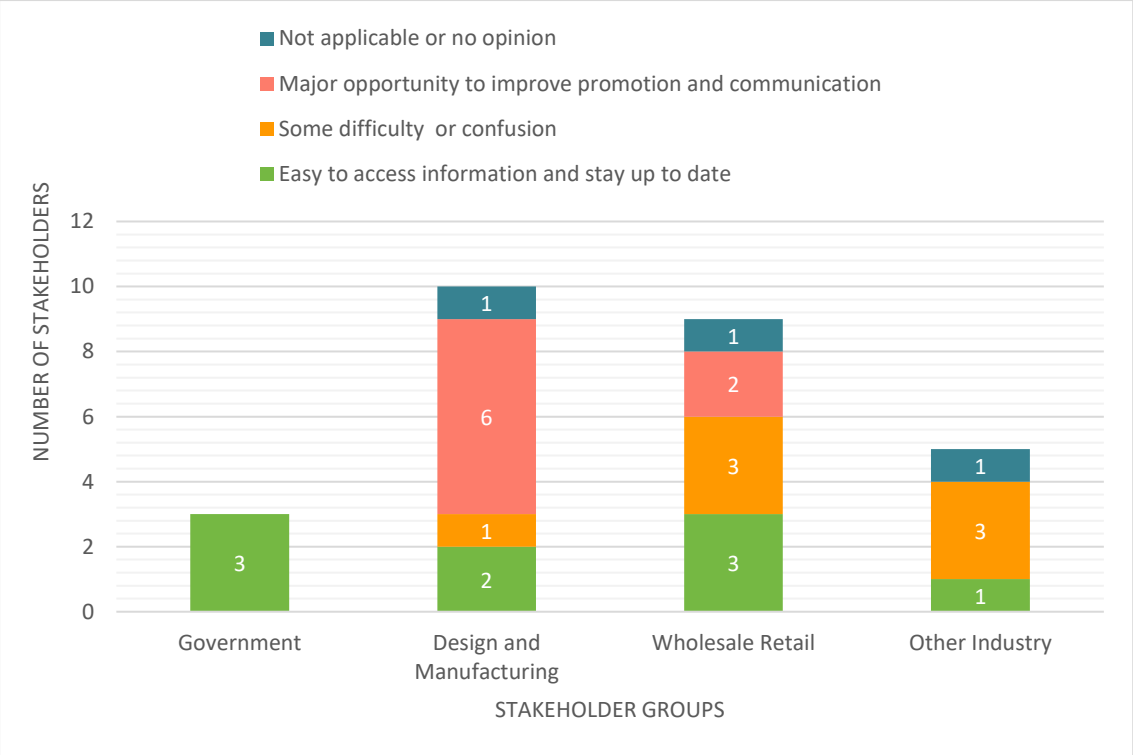
Feedback from this Review has been that where industry and other government stakeholders have contacted the WELS Regulator, the assistance has generally been helpful. Only 25% of interviewees who responded to this query indicated that some or major change was required in communication, with 60% of these from industry.

> *I don't think they are a heavy-handed Regulator. They look to educate in the first instance. They get better outcomes than a heavy-handed approach. [Industry stakeholder]*

There has also been an increase in registrations, which WELSOG assumed was the result of increased compliance activities leading to a rise in industry awareness (Water Efficiency Labelling and Standards Officials Group, 2019). It could also be the result of enhancements made in 2019 to the product registration database used by regulated entities when applying to register or renew product registration (Department of Agriculture, Water and the Environment, 2019).

Surveys undertaken for the purpose of this Review indicate that there are still opportunities to improve promotion and communication about new WELS Scheme requirements and processes. Figure 29 identifies that industry, more so than government, has had issues with the communication of these new requirements.

Figure 29: Survey findings – How well has the WELS Scheme communicated new requirements? (n=27)



The WELS Scheme was generally seen as easier to work with than WaterMark, and there was an appreciation of the WELS Scheme's role in national coordination. At least one consumer stakeholder identified that while there are always opportunities for improvement, the WELS Scheme website and promotional activities were considered useful. One interview participant identified difficulty in finding usable information for local schemes:

the WELS Regulator did not have much available for marketing's sake, so I had to fall back on the website to have that material [Industry stakeholder].

The 6400 Standard being freely available to industry was also considered positive. In its self-assessment, the WELS Regulator indicated that:

> *product registration, how to label and display products, and the standards they must meet are accessible on the water rating website. The website was updated in 2019 to increase accessibility and ease of navigation (Department of Agriculture, Water and the Environment, 2019)*.

Generally, the WELS Scheme has two free-call 1800 numbers and two email addresses that stakeholders and regulated entities can use to provide feedback or ask questions. During 2020, and in response to the COVID-19 pandemic, the Department communicated with industry by email, rather than by phone. Industry stakeholders consistently identified that this approach was problematic and added to delays, an experience reinforced from within the WELS Regulator. A few manufacturers, particularly those from smaller organisations, also identified high levels of frustration in navigating their way through requirements and in getting assistance from representatives of the Regulator. During interviews for this Review, these frustrations were raised by industry stakeholders:

> *And last year, with COVID…. their whole team was working off site. It really delayed the registration process. We try very hard because last year, we had the biggest launch of products. We had more than maybe 500 products to launch last year. And then that was very under pressure and we try our best to deliver and make the product launch day. So last year was very hard for me.*
>
> *It would be appreciated that we could speak on the issue, and understand the problem.*

Figure 30: Survey findings – Communication with the WELS Regulator, by industry size (n=24)

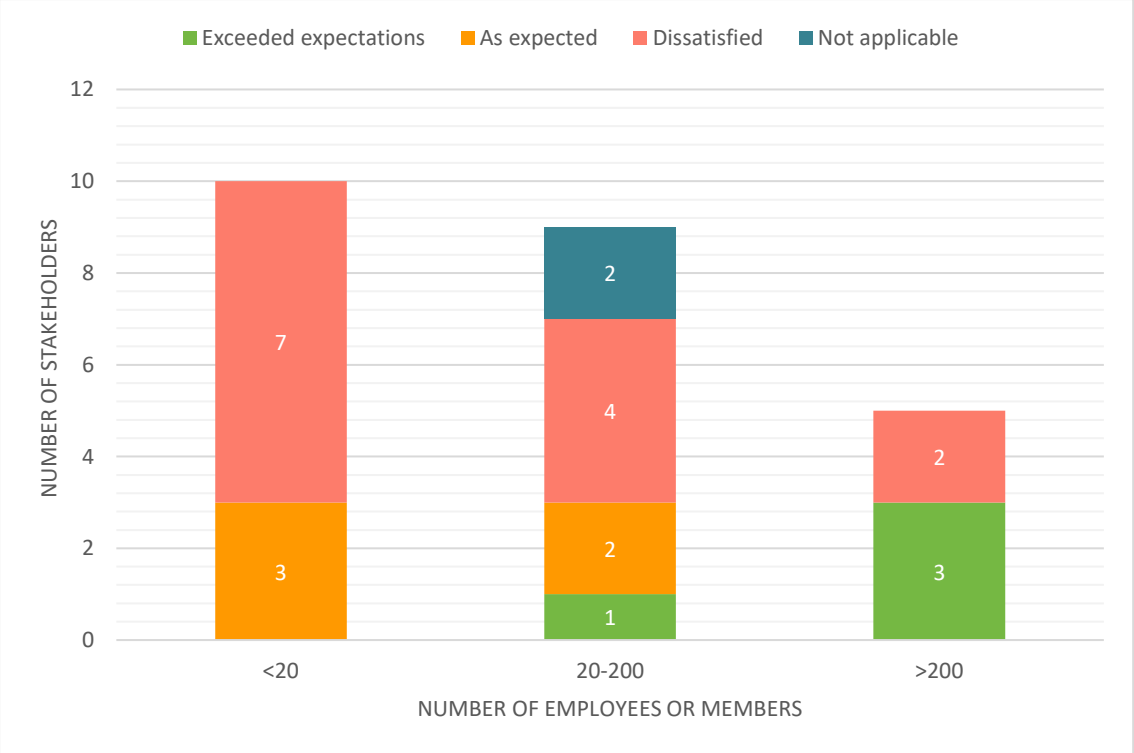
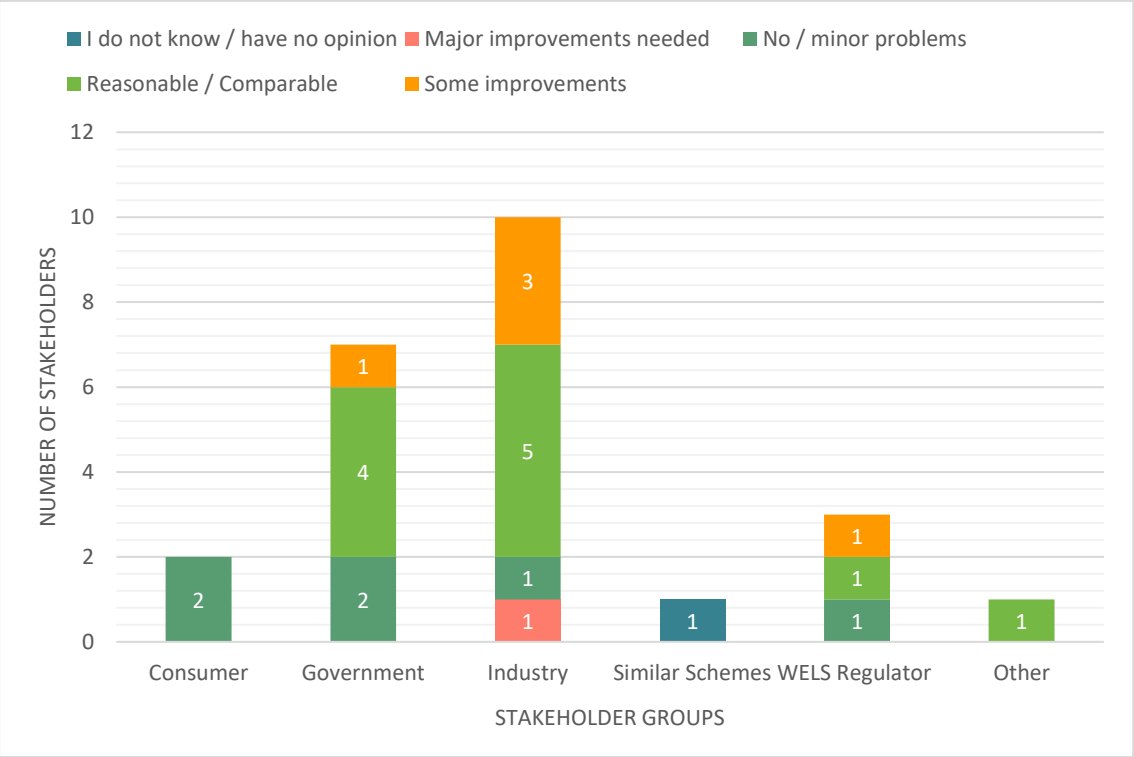


Figure 31: Interviews and submissions findings – Communications with the WELS Regulator (n=24)



During this Review, there was a suggestion identified by multiple stakeholders that WELSAG meetings could be streamlined by separating relevant industry groups between plumbing and appliances. It was also suggested that government and industry committee meetings would be more accessible, less time consuming and cheaper if managed remotely, an idea adopted from meetings held during COVID-19 that were less time consuming and reduced costs.

> *Pre-COVID, we got together face-to-face once a year. Other than that, there were 2 or 3 teleconferences during the year. Teleconferences are generally preferred because you can cover a fair bit.* [Government stakeholder]

There continues to be a need to monitor how well communications are achieving their intended outcomes both for industry and consumers. While it is acknowledged that some data are available, communication does not appear to be systematic. It primarily occurs via other sources, and is monitored through external systems, like eBay's online data reporting. This need for systematic monitoring is also a requirement of the 2019–20 Department Corporate Plan, which calls for measures to 'track engagement with key stakeholders (industry, environment, local government)' (Department of Agriculture, Water and the Environment, 2020a, p. 40) in the overall Water Resources objectives.

Records that track industry contact and queries made to the WELS Regulator were not available. The Department is currently undertaking a large ICT upgrade which will in part assist with transparency in processes. The upgrade will add internal tracking mechanisms, user activity monitoring and live chats (Khan, WELS Current state analysis, 2020a). Key Performance Indicators (KPIs) can be included that ensure reflections around recurring issues and long lead times for industry responses. This has been reinforced by the Australian National Audit Office with a 'not met' rating for the Department of Agriculture, Water and the Environment (DAWE) against 'Reporting on the financial and non-financial performance of the activity' in 2019 (Australian National Audit Office).

The 2015 Review also recommended that the WELS Regulator continue to improve education, assistance, support and advice for industry to enable stakeholders to meet their legal obligations under the WELS Act, without the need to escalate costly enforcement actions. This was accepted by the WELS Regulator in 2016 (Department of Agriculture and Water Resources, 2016). Consideration is currently being given to a WELS Scheme unit of competency in the Construction, Plumbing and Service Training Package by the Australian industry and Skills Committee (Department of Agriculture, Water and the Environment, 2020), to form part of plumbers and builders licencing training packages.

Representatives of the WELS Regulator informed this Review that they are working on the WELS Scheme being included in the vocational education curriculum, but that this has been somewhat delayed. Its inclusion does, however, remain a priority for industry.

> *It is an important piece to getting the licences. There is a dire need for education programs to happen. We tend to focus on WaterMark but tend to leave [the WELS Scheme] on the side. And that needs to be overcome.* [Industry stakeholder].

There are still opportunities to improve industry education around application processes (particularly those applications submitted for the first time) and compliance issues, as there is only limited 'root-cause' analysis of these processes and issues in the WELS Regulator's systems.

Examples of misunderstandings relating to the WELS Scheme identified by stakeholders include:

- stakeholders not knowing the reasons for delays in the progress
- misunderstandings amongst stakeholders about the renewal process and the timeframe for renewals
- some industry stakeholders perceiving that standards are set for new buildings by the WELS Scheme, rather than through the National Construction Code and State and territory building regulations, WaterMark and/or individual developers
- a number of industry stakeholders identifying the standards, and their application, as being open to interpretation, thereby leading both to overly 'strict' requirements in some cases and to mixed advice from the WELS Regulator depending on which staff member was engaged.

Government stakeholders primarily work through WELSOG, with varying levels of involvement among states and territories. The WELS Scheme did not generally appear to be a high priority for states and territories, with many of these stakeholders having minimal interaction or involvement with the Scheme itself. The predicted savings from the WELS Scheme by states and territories is indicated in Table 13 below.

Table 13: 2036 predicted savings by state/territory

	NSW	VIC	QLD	SA	WA	TAS	NT
Water savings (GL)	70.16	58.06	50.92	14.77	30.61	4.09	2.32
Greenhouse Gases (Mt CO_2-e)	18.17	17.56	10.74	3.30	5.48	0.45	0.20
Electricity (TJ/a)	2749.12	2156.46	2002.00	657.94	1268.14	247.34	45.04
Gas (TJ/a)	4489.28	3114.15	2758.26	1025.57	1669.30	284.80	55.63
Household utility bill ($M/a)	822.26	511.95	677.13	215.65	355.11	40.81	15.25

Source: Institute for Sustainable Futures, 2018

Several government stakeholders were positive about their interactions with the WELS Scheme:

> *Anything we need to deal with is through WELSOG or as we need (which there hasn't been any need outside of the WELSOG meetings) … The government arrangements are quite well-set. The pathway set up for WELS to pursue is quite well-set. They can continue doing what they need to do without the Officials Group.*
>
> *No complaints around [the WELS Scheme]. [It] is not even brought up in my department.*

Current process efficiencies and burden on industry

The Review considers the WELS Scheme does improve water efficiency and consumer behaviour in relation to water consumption. Its primary purpose is not to benefit industry, but rather to influence consumer behaviour (using behavioural economics) to provide benefits for the broader community. Yet, the majority of the financial, and non-financial, burden of the WELS Scheme is carried by industry, a burden they believe to be disproportionate to the positive impact of the Scheme.

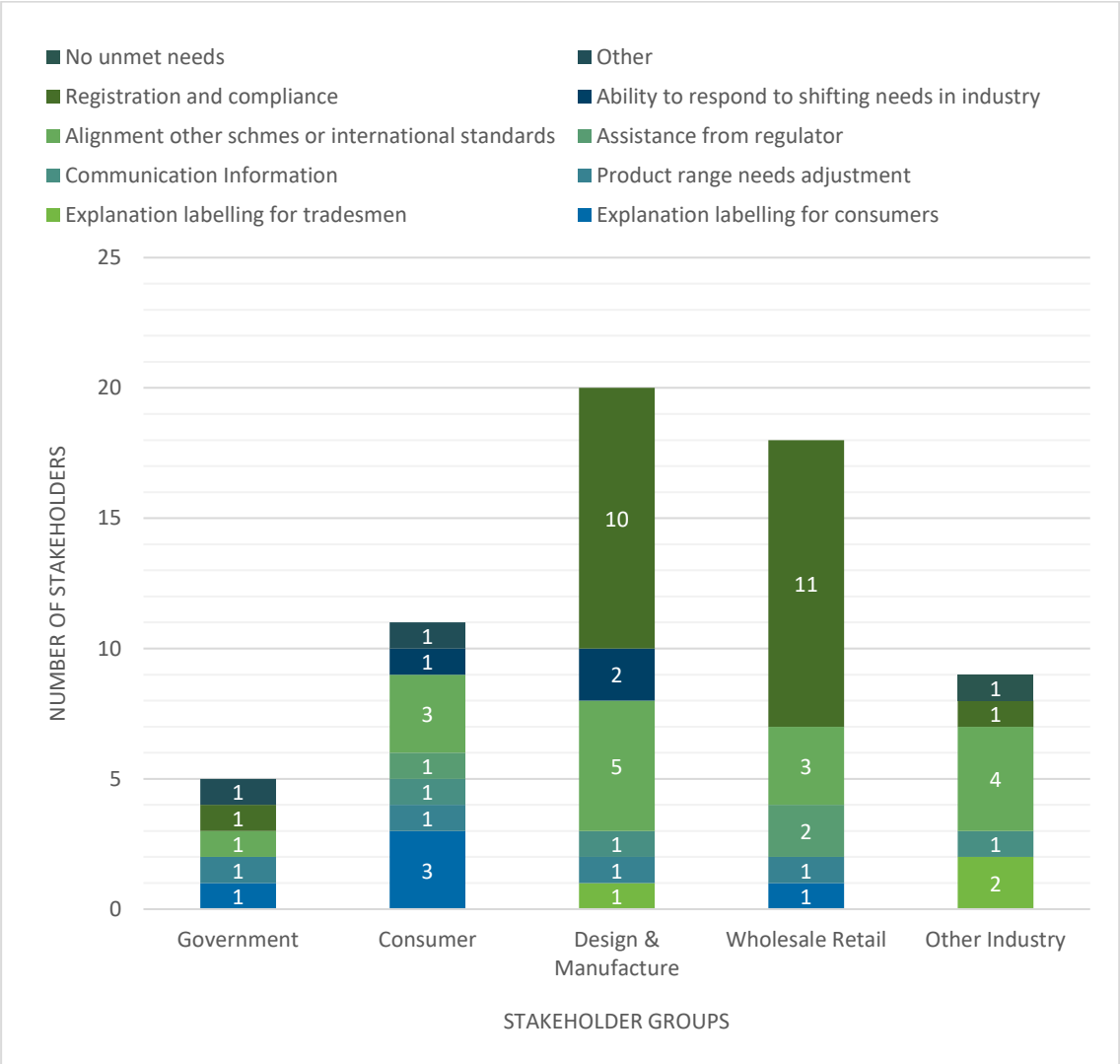
It is generally recognised, in the literature and through consultation across all stakeholder cohorts, that the processes within the WELS Scheme and cooperation with other Regulators could be improved. As well as the pending ICT project upgrade, further efficiency improvements have been identified through leveraging synergies with other Regulators. Ascertaining any registration and compliance opportunities will emerge as a result of monitoring performance, a process that has not yet been developed but is planned as part of gathering the baseline data for the ICT project.

The scope of the current ICT project is to review the user interface and user experience in the WELS database, and to redesign the WELS Scheme interface where applicable so as:

- to meet the current Australian Government web accessibility standards
- to reduce the application processing times when industry needs to register products
- to allow access from different media types.

During the survey, stakeholders raised several efficiency-based issues (outlined in Figure 32).

Figure 32: Survey findings – Stakeholder efficiency-based issues (n= 29), multiple responses per participant[5]



Generally, industry (particularly smaller businesses) had the most issues with the efficiency of the processes (a sample of which can be understood by considering Figure 32). These concerns were reinforced through all forms of data gathered for the purposes of this Review. However, inefficiencies were also recognised by other Regulators:

> *sometimes those streamlining and efficiency gains aren't there.* [Regulator stakeholder]

[5] Other industry includes associations, standards groups.

Figure 33: Interviews and submissions findings – Opinion on efficiency of registration and compliance processes (n=30)

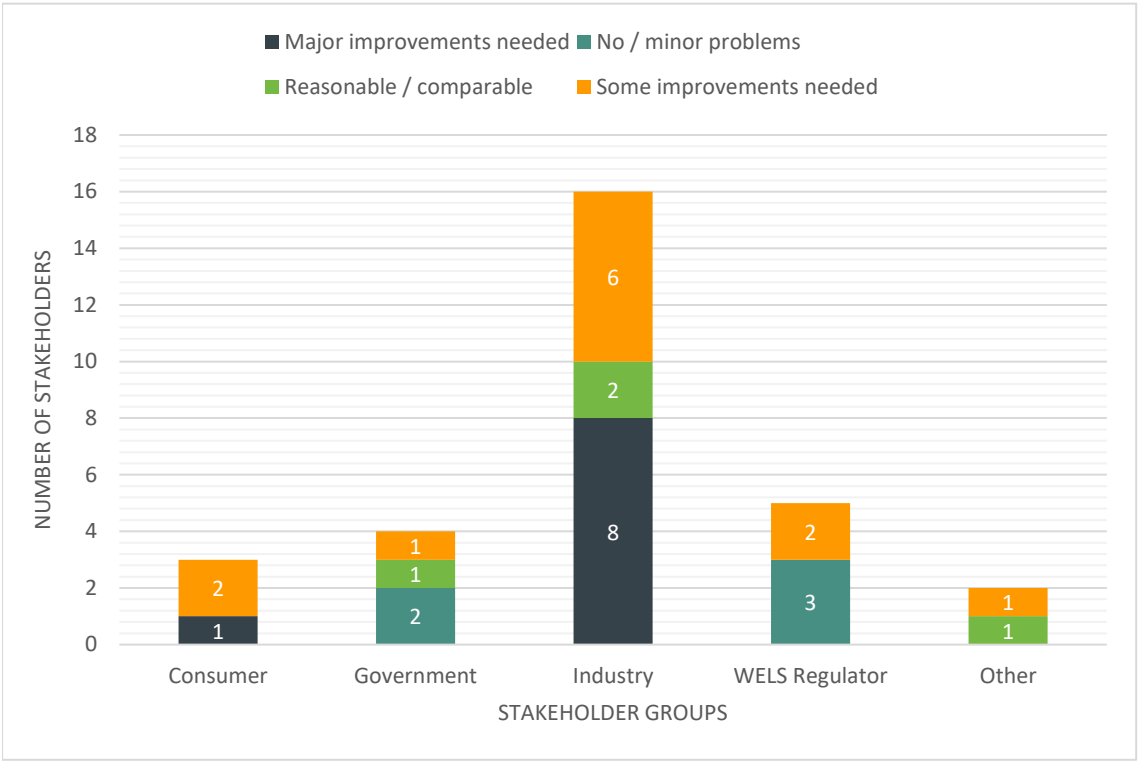
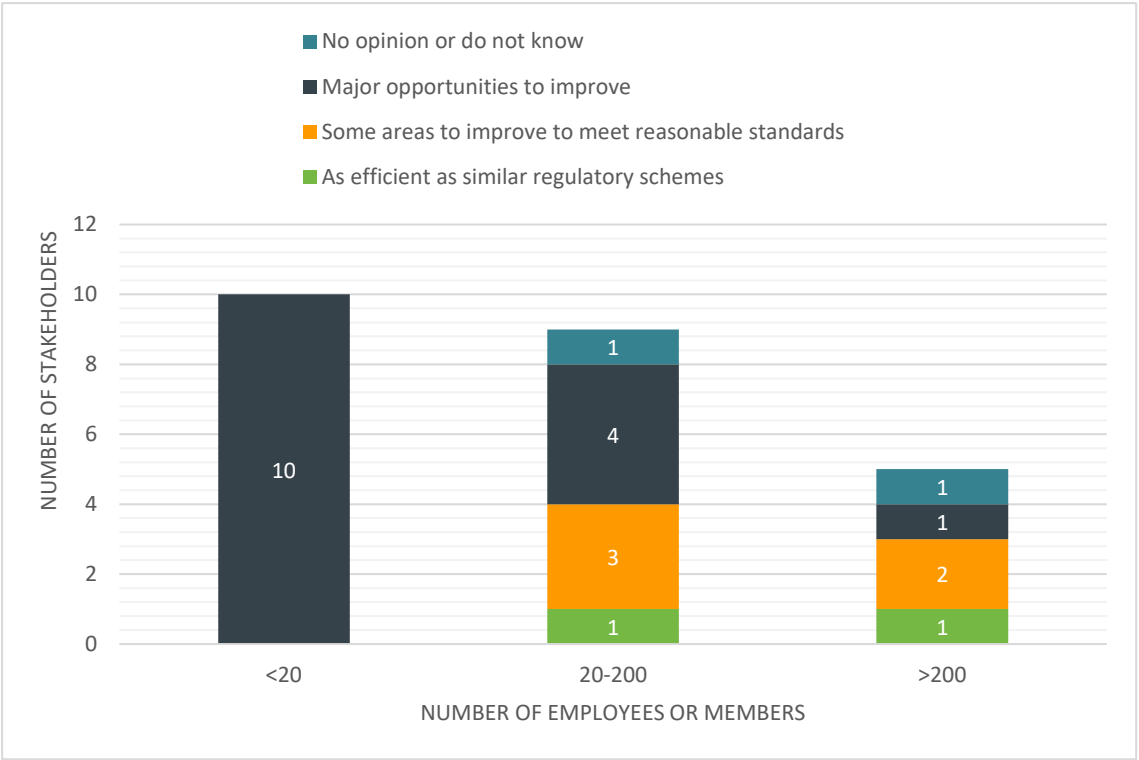


Figure 34: Survey findings – How efficient are the registration, testing and compliance processes? (n=24)



Testing and registration

The WELS Regulator has continued to manage an increasing number of registrations indicating increasing efficiency amongst staff. The ICT project upgrade is expected to further enhance and streamline efficiencies in testing and registration processes. However, no baseline information apart from 2019/20 data on new applications are readily available to quantify any improvement, although a need for them was identified in the Department's *Current State Analysis report* (Khan, 2020a).

Table 14: Registration data over time

Year	Number of registrants	Registered products	Registered variants	Total products registered
15-16		n/a	n/a	16,017
16-17		20,965	3,503	24,468
17-18		21,152	3,829	24,981
18-19		25,383	5,522	30,905
19-20	434	22,951	7,001	34,481

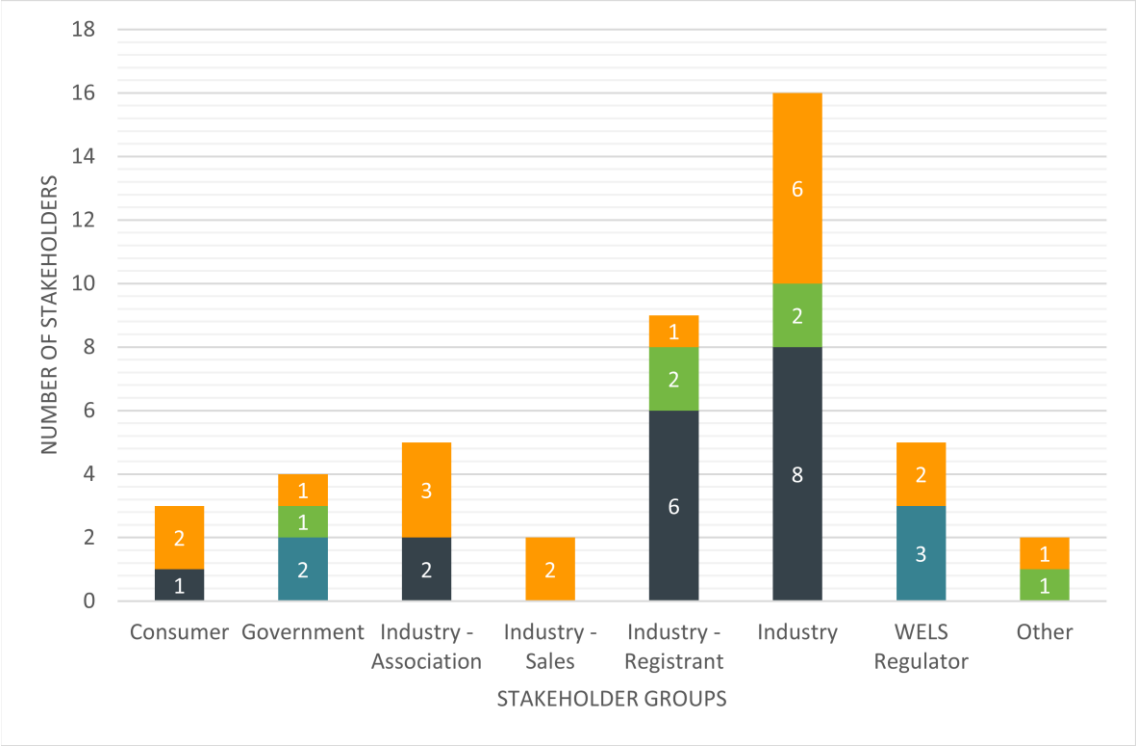
There are further opportunities to improve registration lead times, as process flows and data provided for 2019/20 demonstrate that 62% of applications require reworking.

The ICT *Current state analysis report* (Khan, 2020a) identifies the maturity of the registration process as lying between levels 1 (awareness[6]) and 3 (defined[7]), and compliance between levels 1 and 2 (general acceptance[8]). This assessment is supported by stakeholder interviews and submissions, with 21 out of 30 responses identifying that some level of improvement is required, with nine of these classified as 'major improvements'. Similarly, the report, as part of the ICT project (Khan, WELS Current state analysis, 2020a), categorises 18 'pain points' for registration and 26 for compliance in the current WELS Scheme processes. On a more positive note, the report identifies integration with the WaterMark database and with test laboratories as opportunities for improving synergies across organisations and system enhancements in alerts, finance system integration and automation.

Figure 35 relates to interview and submission findings from all stakeholder cohorts. The quotes accompanying it, illustrating the issues industry has with registration and compliance processes, are from industry alone.

[6] Level 1: Recognises the importance of streamlined processes but does not have a complete road map for putting into practice.
[7] Level 3: Standard processes and methodologies are in place to build the capability.
[8] Level 2: Acceptance that this process needs to be developed with pockets of good practice.

Figure 35: Interview and submission findings – Efficiency of the registration and compliance process (n=28)



'Annual renewals are burdensome. Variants cannot be submitted at the same time as the base submission; it takes over four weeks to approve a WELS Submission, then an additional four plus weeks for the variants to be approved. ***I have had a product take almost 4 months to have all variants approved – this needs to be fixed.*** This is exacerbated by renewal time envelope excluding ability to register any new products between Sept – Dec and delays getting products onto website once approved'

'The registration and fee structure is fundamentally broken… there seems to be a logic disconnect ion with regards to how variants should be able to be registered… based on the new requirements WELS want to enforce for product colour we hold significant concerns that the only direction for regulation is far more heavy handed than it should ever be.'

'The [WELS] Regulators spend too much time on topics not related to water-saving which takes up their time:

Unnecessary testing of similar products (mentioned by six registrant organisations)

Inconsistent interpretation of standards by WELS staff

Quality and interpretation of photographs, drawings'

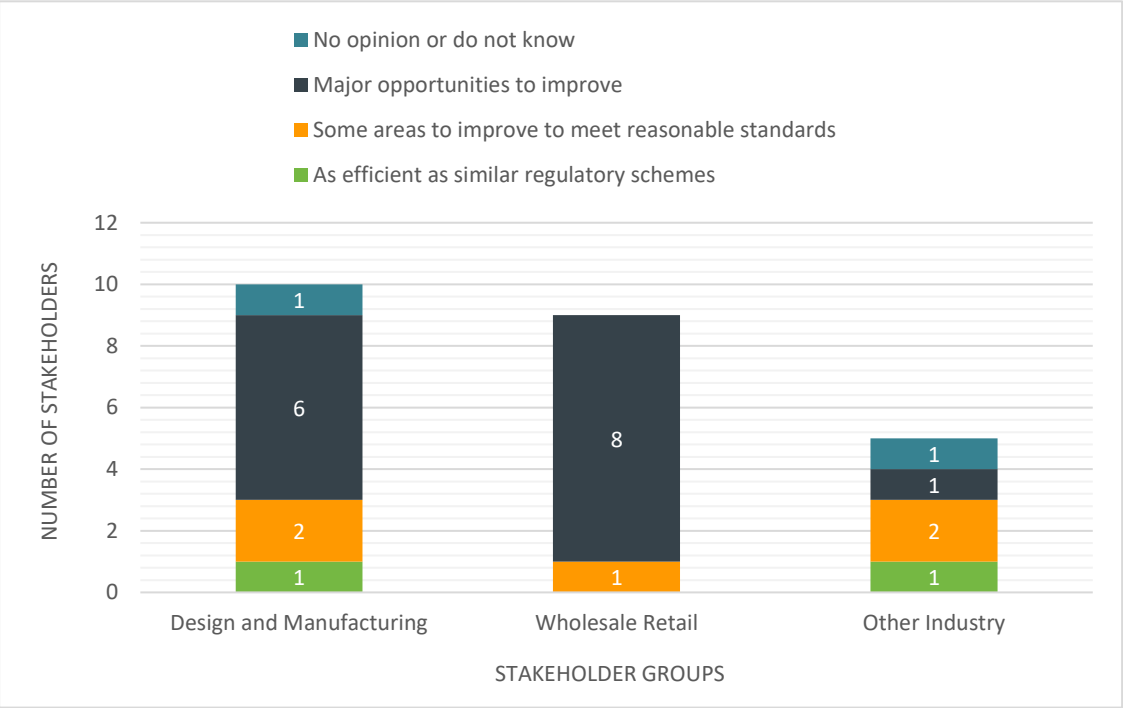
'Costs, time and complexity, all these add up to a barrier to bring new products into the market.'

'WELS website crashes'

'Unnecessary duplications when considering overlaps with WaterMark' (reflected across four responses)

The survey demonstrated the same trends.

Figure 36: Survey findings – Efficiency of the registration and compliance process (n=24)



Department FY 2019/20 data indicate a 62% resubmission rate for new applications, reflecting a rework in the application process. Gaps remain in the data including the length of time needed for resubmission processing, which also depends on the registrant. However, a first-time-through application takes an average of 62 calendar days to process, one month of which is taken up in raising the invoice, with applications not requiring payment taking an average of 39 days. Where resubmissions were required the incremental approval times were not available.

This was identified as a key area of improvement by applicants in the *Current state analysis report* (Khan, WELS Current state analysis, 2020a). Anecdotally, gaps in information are due to the difficulty of extracting data from the current systems. A high-level registration process was developed in 2018 and included in the Regulatory Overview (McGrathNicol, 2018b), but the data are not granular enough to provide instruction or identify detailed improvements.

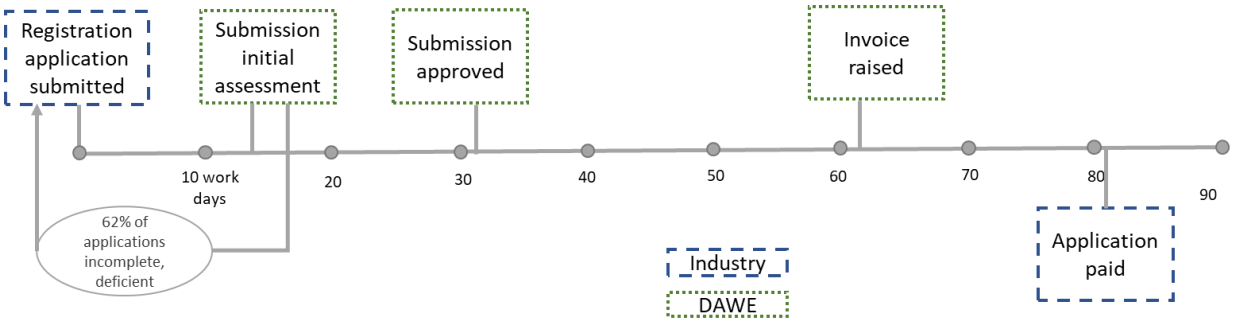
There have been improvements over time, demonstrated by the increasing number of registrations processed year on year. This has been achieved by assigning the responsibility for application approvals to more junior staff. Unfortunately, though, there is still only one approving role, which creates a bottleneck and thus an organisational risk.

Figure 37: High-level registration process

Source: McGrathNicol, 2018 (Note: This diagram is a small part of a larger set of diagrams)

To develop an understanding of bottlenecks and opportunities for efficiencies, the reviewers developed a diagram explaining the new registration process (see Figure 38), drawing on 12 months of data. Regardless of the efficiency of any planned information technology system, the causes for reworking applications should be reviewed. The ICT project is an opportunity to improve the current 38% resubmission rate, to reduce the duplication in the separate variant applications, and to update the processes, not just the tools, used to manage them. In addition, some internal performance data are not tracked or available. Other Regulators require payment upon application, which may reduce the lead time for WELS registration approvals that currently show a one-month processing time to raise invoices.

Figure 38: New registration process as developed from Regulator performance data FY 2019/20



The types of process changes that could be considered for the planned ICT system have been identified as having the opportunity to resolve:

- discretionary and differing interpretations of requirements by the WELS Regulator, some of which are seen as having little effect on water consumption. Submissions and interviews from the Review identified this ambiguity, an example of which is given here, as driving complexity and cost into the industry base:
    - definition of a model in the 6400 Standard reads: '…elements that **may** affect the performance and/or appearance of a product (Standards Australia, 2016a, p. 10)'
    - s. 2.4(b) may also open the door for interpretation: 'design elements or components that affect the water consumption (Standards Australia, 2016a, p. 11)'
- misinterpretations of requirements by the registrants
- delays that arise from restricting the renewal period to 15 September – 5 December each year
- the overly complex registration requirements for minor and variant products that add cost and delays into product registration (s. 2.2.2 of the WELS Standard). For example:

  all model variants shall be registered in the WELS registration database, in the form in which they are offered for supply. If a new product is manufactured and meets all the criteria for being a variant, it shall be registered as a variant before it is offered for supply. (Standards Australia, 2016a, p. 11)

Compliance

In its self-assessment, the WELS Regulator indicated that compliance and enforcement tools are employed on a graduated pyramid scale in accordance with the Compliance and Enforcement Policy (Department of Agriculture, Water and the Environment, 2019). The same self-assessment also noted that decision processes and escalation pathways are followed in accordance with the compliance management model and are documented internally and used in addressing non-

compliance (Department of Agriculture, Water and the Environment, 2019). During stakeholder interviews, it was pointed out that work in improving compliance processes is underway. Despite this, there is still significant frustration with the state/territory plumbing inspectors who identify the need for point-of-sale inspection (with the WELS Scheme). This need arises from the current regulatory frameworks across WELS and WaterMark preventing WaterMark inspectors from reporting WELS non-compliances. While this has been resolved in Queensland where a point-of-sale check has been added to the WaterMark certification, in part duplicating the WELS Scheme's effort for common products, it is still an issue elsewhere. Note that a cooperative compliance program with all states and territories was recommended in the 2015 Review (Water Efficiency Labelling and Standards Regulator, 2015a) but has not been adopted.

Process flow data, similar to that for registration, were not available on the compliance process, although a process flow was developed in 2018 through the 'Regulatory overview' report (McGrathNicol, 2018b) and in 2020 with the *Current state analysis report* in preparation for the ICT project upgrade (Khan, WELS Current state analysis, 2020a). The latter identified 26 pain points in the compliance process, a less developed process when compared to that for registration, despite the existence of a Compliance Decision Tree that identifies a non-compliance (Water Efficiency Labelling and Standards Officials Group, 2017). This ICT report also found there was no system in place, which led to the use of manual systems and reporting (Khan, WELS Current state analysis, 2020a).

Consultation with industry around the compliance process identified a number of key issues including the NewBuild initiative in 2018, overly high non-compliance penalties, and the need for more online shopping and imported product compliance. However, the biggest issue consistently raised by stakeholders was the need to combine WELS inspections with WaterMark and/or E3 inspections to streamline this process. Combined compliance inspections could add efficiency across all schemes and build awareness in both industry and amongst consumers. This would also reduce duplication by removing inspection by WELS for point of sale and further inspection by WaterMark at point of installation.

Government and Regulator stakeholders raised the issue that WELS inspectors have powers of entry under the WELS Act but not under plumbing regulations. Further, state and territory plumbing inspectors, due to privacy provisions, are currently unable to share information with the WELS Scheme on where inspections will take place unless consent is provided by the building occupier. Nor can they share information about WELS non-compliance because the information will have been collected for another purpose other than for the plumbing regulations activities.

> *The only way was to have a WELS Inspector and Plumbing Inspector to attend at the same time, but then the WELS Scheme does not have powers of entry.* [Government Stakeholder]

The WELS Scheme and WaterMark are legislated and administered separately, one by government and the other through industry (ABCB). When asked if the two schemes could be inspected at the same time, a government stakeholder indicated that they did not have the resources to support joint inspections.

There are, however, opportunities to enhance the effectiveness of the compliance process. Stakeholders identified the potential to embed automated checks within online platforms, including in cases where test results data are entered directly into the registration application system, which then validates them against thresholds, or when the WaterMark approval reference is automatically checked against an integrated database. Regulator staff could then randomly sample approvals generated more automatically and manage complex cases where automation cannot be done.

Consideration could also be provided to where and when tap and shower assemblies, with flow Regulators, are inspected given that they can be modified by plumbers and consumers. As inspecting before installation may not reflect the final installation assembly, it is, therefore, less meaningful than an assembled test in situ. This type of change could only be done on a sampling basis and would require plumbing inspectors to have the appropriate powers to inspect for WELS compliance.

Further consideration could be given to understanding non-compliance trends, including how they vary across online and in-store retail and between large or small retailers, and across building industry inspections, product types and sales in different states and territories. This information could show where the non-compliance risks lie and inform annual work planning.

Potential synergies with E3 and WaterMark (also discussed in Section 5.1.6)

The 2015 Review identified possible synergies between the WELS Scheme, E3 and WaterMark, and recommended:

- combining the WELS Scheme and E3 under the same government department
- single point of compliance responsibility for common whitegoods
- combining the WELS Scheme and the CAB databases. (Department of Agriculture and Water Resources, 2016)

Whilst the Department accepted the latter two recommendations, the first recommendation was not accepted.

The WELS Compliance and Enforcement Strategy, (Water Efficiency Labelling and Standards Regulator, 2017a) last reviewed in 2017, recommends closer alliances with other schemes. While there have been regular meetings to discuss compliance matters (as indicated by staff from the WELS Regulator during interviews), process alignment and other synergies have not as yet been implemented. The suggestion to combine E3 and the WELS Scheme in the same government department was brought up by several stakeholders during the course of this Review.

> *Internal analysis suggests that it is unlikely that sufficient savings could be identified to justify a move to administer the WELS Scheme and E3 within the same Commonwealth Department (Department of Agriculture and Water Resources, 2016, p. 3)*.

Industry stakeholders continue to support and raise recommendations for the consolidation of at least part of the WELS Scheme's operations with WaterMark and E3. Seventy-two per cent (n=29) of those interviewed or who submitted a response came up with 32 suggestions as to at least a partial combination of WELS with the two schemes; 10% of these were from government with the rest from industry, other Regulators or consumers.

In general, the issues affecting the efficiency of industry/consumer-facing processes were:

- duplication in product testing, with the WELS Scheme requiring more stringent testing of the same products
- differences in the WELS Scheme/E3 testing cycles for appliances could potentially mislead consumers by identifying energy and water efficiency ratings that are tested on different washing cycles. Although the standard illustrates that the same cycle should be used for testing, this Review identified a misunderstanding with industry, also recognised by the Regulator, which may lead to inefficiencies that industry are not even aware can be mitigated

- the need to incorporate national point-of-sale regulatory and enforcement requirements for WaterMark, rather than at point of installation, that would align with the WELS point of sale enforcement provisions. Queensland already has this requirement for WaterMark
- disparate and separate registration processes across Regulators (WELS Scheme, WaterMark, E3) for common products:

  Industry has long recommended that there is integration between the WaterMark and WELS databases so that an approval certificate can be entered once, thus saving on administrative resources. [Industry stakeholder]
- difficulties in identifying the same products across the WaterMark and WELS Schemes' databases (note: integration is identified in the ICT upgrade as an area of opportunity)
- the lack of synergies for industry across appliances and plumbing products currently jointly managed through the WELS Scheme, with suggestions that appliances align more with E3 than with WaterMark, and that plumbing products have little in common with appliances: for example, different supply base and requirements for installation qualifications.

Consideration could be given as to whether the WELS Scheme could improve synergies with other Regulators, including for example E3 or Watermark, by sharing ICT systems relating to registration and compliance. This could support joint registration and data warehousing.

Industry burden of operating within a WELS regulatory framework

The cost recovery model for the WELS Scheme is 80% through industry registration and 20% through state/territory and Commonwealth governments. It is conceivable that the model based on industry registration fees leaves itself open to variances in market demand. For example, interviews identified that the number of registrations, and therefore the fees, were expected to drop during 2020 due to COVID-19, but this did not happen. While historical trends show that industry cost recovery is as budgeted, there is a risk that a reduction in registrations could eventuate and, if realised, that may limit the effective operation of the WELS Regulator and cause it to be underfunded in an extreme case. The WELS Scheme 80% funding dependency on the market may introduce volatility into its cost-recovery stream, and consideration should be provided to the *Australian Government Cost Recovery Guidelines* which state 'cost recovery charges should be set to avoid volatility, while still being flexible enough to allow for changes based on fluctuations in demand or costs' (Australian Government, 2021).

The WELS Cost Recovery Impact Statement (CRIS) (Water Efficiency Labelling and Standards Regulator, 2015) discusses the current funding amount and the 80:20 split between industry and government. It describes the benefits of the WELS Scheme as being two-fold including that it is for the greater public good in terms of environmental management; and that it is primarily for households that are able to save on utility bills through the introduction of more water-efficient products. The 80:20 industry/government split is thought to be focusing the cost of the WELS Scheme on the ultimate beneficiaries (consumers) (Water Efficiency Labelling and Standards Regulator, 2015), but the evidence of commensurate utility bill savings directly attributable to the WELS Scheme is difficult to find.

This Review raises the following questions about the above assumptions:

- interviews with industry raised concerns that water usage is less likely to be influenced by plumbing products that can be manipulated by the consumer or by the design of how the product sits within a building, including, for example, the length of showers or the distance of a shower from a hot water unit
- the majority of household utility costs are for electricity, so even an increase of 15% in water price per litre will not change the priority of electricity in a utility bill (Institute for

Sustainable Futures, 2018). By using more water-efficient products Australians could save $2 billion by 2030, an average saving of $175 per household each year. The estimated savings are 65% from avoided water heating due to reduced electricity and gas costs, and 35% from reduced water bills (Department of Industry, Science, Energy and Resources, n.d.)

- during consultation, industry raised concerns that water-efficient and electricity-efficient cycles are said to be different on appliances like dishwashers and washing machines and CHOICE identified that cycles for washing machines and dishwashers do not necessarily reflect common household usage patterns
- during consultation, several industry and consumer stakeholders indicated that product pricing and appearance are significant contributors to consumer choice in product purchases
- to combat the potential unaffordability of premium water-efficient products, rebate schemes are offered through local councils, water utility companies and state governments (Water Efficiency Labelling and Standards Regulator, 2015)
- although the WELS label is well recognised by the public, and a more efficient product does save water, public awareness campaigns, drought and other influences have a significant effect on household water usage (Institute for Sustainable Futures, 2018). Good examples of these are the 3-minute shower campaign and the Victorian 150L/day.

The CRIS identifies that the Standing Council on Environment and Water (SCEW), which consists of government representatives, reconfirmed the 80:20 industry/government split and that 50% of costs were for product registration. The CRIS also describes the mechanism for recovery of the 80%, but not its approval or justification.

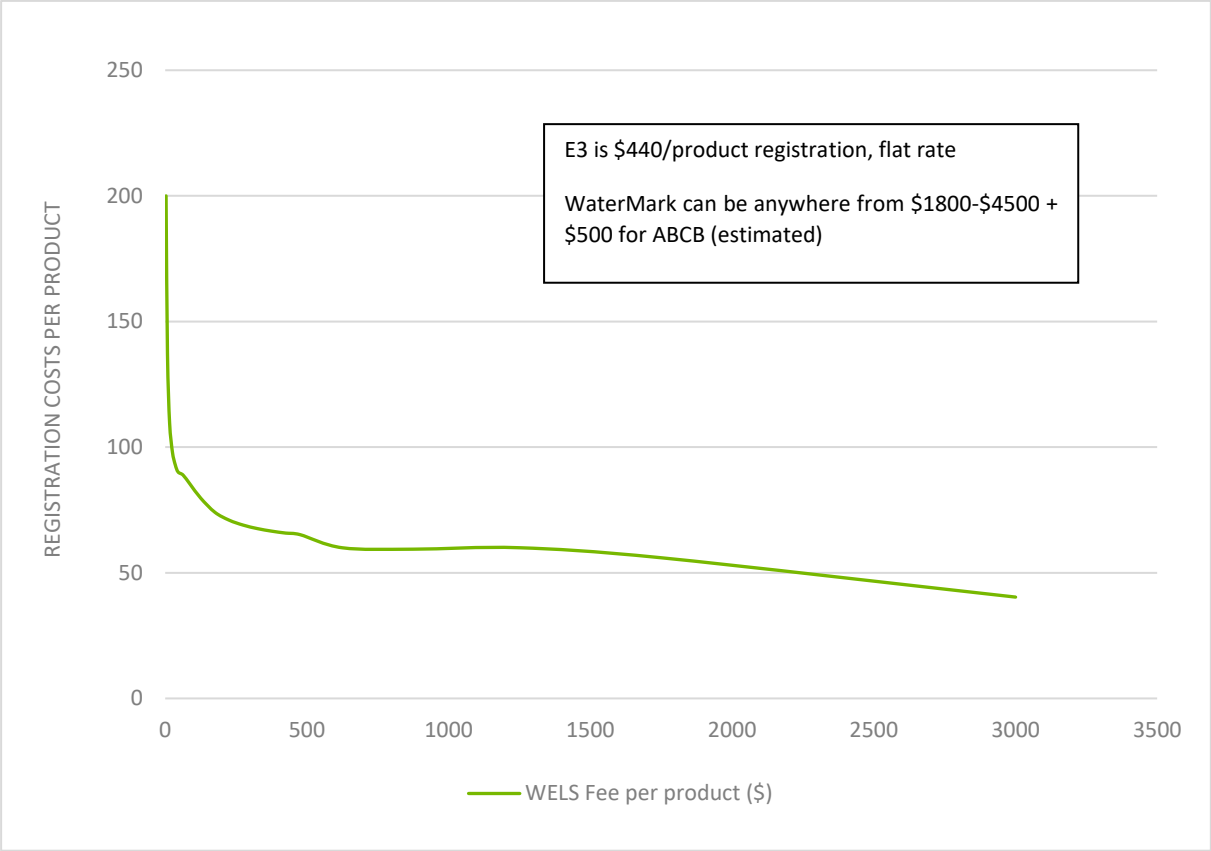
The industry burden has financial and non-financial elements. The second independent Review of the WELS Scheme found the main direct costs to the manufacturing industry were fees (totalling around $1.23 million in 2014–15), with median total registration fee costs amounting to approximately $1,700 per registrant. The majority of registrants are overseas entities. According to the Review, registration fee costs are primarily an issue for manufacturers or importers (registrants) of WELS Scheme products. In addition, registrants incur costs for testing and labelling products, and for the time needed to register and renew products and to ensure compliance. Some small Australian businesses noted that they may have to hire consultants to assist in this process.

The supplier industries, such as retailers, also bear costs resulting from the WELS Scheme. These costs relate to additional in-store or online labelling, destroyed or returned stock due to expired product registration, and additional internal procedures and staff training (Water Efficiency Labelling and Standards Regulator 2015).

In the *Evaluation of the environmental and economic impacts of the WELS Scheme* (2018 environment and economic review), (Institute for Sustainable Futures, 2018) testing, registration administration and labelling costs were quoted between $3,000 and $9,000 per product model (taps/shower, toilets, clothes and dish washers) with up to $6.50 added to the cost of each product sold plus registration fees. Note that WaterMark and WELS are generally combined in these costings as WaterMark is a requirement for WELS.

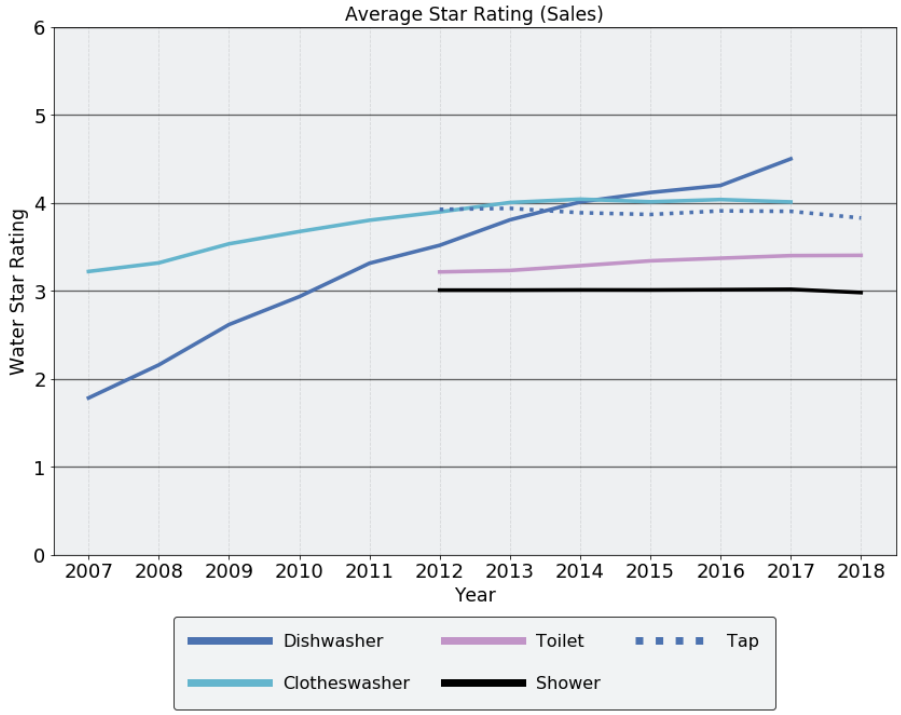
The tiered fee structure charges industry an average of $120 per model for registering five products and $60.50 per model for 2000 products (Water Efficiency Labelling and Standards Regulator, 2015). This would appear to penalise those industries with smaller product ranges, and supports the feedback from industry and the literature, both of which identify that smaller organisations are disproportionately charged.

Figure 39: Registration costs per product for WELS



It might be assumed that industry costs are recovered by passing the cost on to consumers, who are posited to be the main beneficiaries of savings through lower utility bills (Institute for Sustainable Futures, 2018). However, a possible risk that has been identified in previous studies is that this extra cost was pricing products out of the reach of the population most in need of savings on their utility bills (Institute for Sustainable Futures, 2018). Further, the same study found that the change in sales volumes over time has not demonstrated an appetite for consumers to buy more water-efficient products. The very small number of consumers who contributed to this Review noted that they expected that the costs of these schemes would be passed onto them.

Figure 40: Average star rating

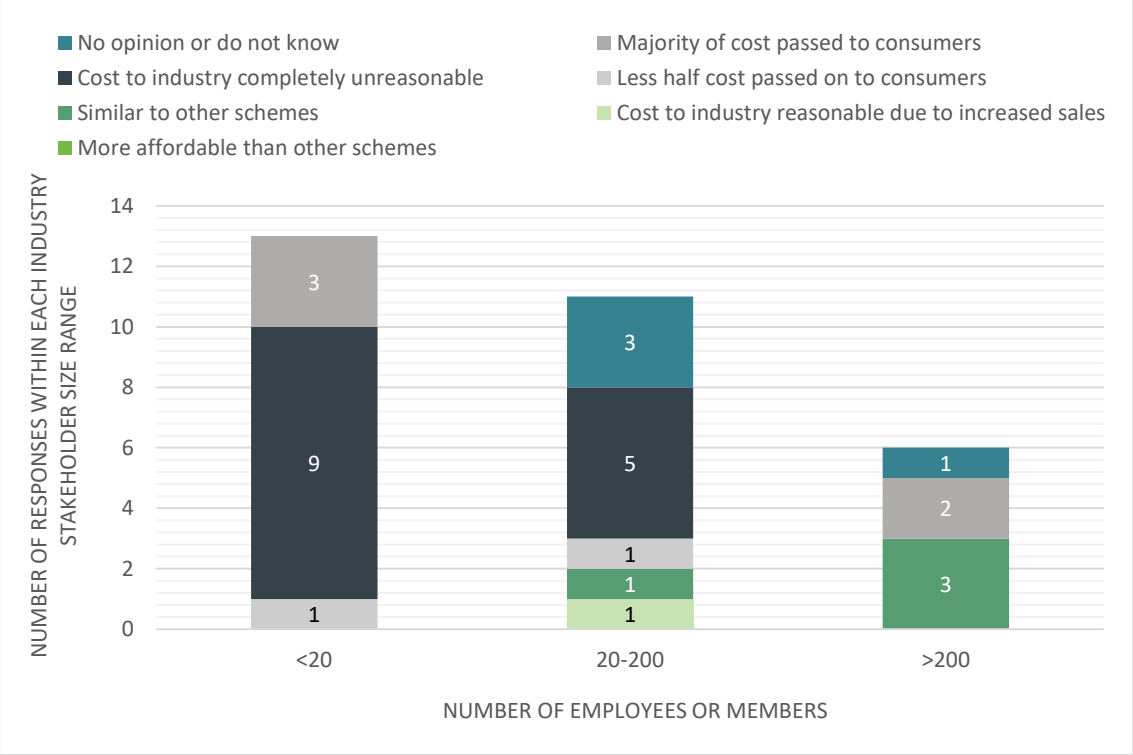


Source: Institute for Sustainable Futures, 2018

The limited effect of incremental star rating on consumer behaviour was reinforced in the feedback received for this Review. The inability of industry to pass on costs to consumers was identified as a problem by six participants. However, some industry stakeholders identified that there was no possibility of recovering all the costs by passing them on to the consumer given the low volumes and bespoke nature of their product range. While there are relaxed requirements for products estimated to sell less than 100 per year, manufacturers try to optimise their sales and sometimes struggle to estimate an annual sales amount before the product is released to market. As can be seen from the survey results, smaller businesses appear to have greater difficulty with the requirements of the WELS Scheme than those with more than 200 employees.

There were mixed views regarding the reasonableness of the WELS Scheme's costs for registrants. While government and Regulator stakeholders said they were appropriate, industry registrants and their associations considered the costs imposed on them (80% of the WELS Scheme's total cost) to be a disproportionate burden (Department of the Prime Minister and Cabinet, n.d.).

Figure 41: Survey findings – Feedback on industry burden (n=24)



A submission received by an industry association for the purpose of this Review indicated that it supports the need for industry to pay its 'fair share of the costs for WELS to ensure that the scheme is adequately administered and enforced. Despite the high support for the scheme, members feel that the benefits, in terms of the Scheme's objectives, to them are minimal, and that the current 80% cost contribution is disproportionate'. [Industry Association]

A number of industry representatives identified that there is little motivation for them to increase the star rating of their products, even those with superior performance, because the expense is simply 'not worth the effort'. Although hard to draw robust conclusions, the 2018 environment and economic review (Institute for Sustainable Futures, 2018) also noted that it is unclear to what extent the industry burden of registration, administration and compliance is reasonable in the context of recovering costs through increased demand and sales.

The opinion on the cost split between industry and government is not surprising; industry are against funding the current 80% of costs and government stakeholders suggested paying more than 20% would not be easily justified. Of the small sample size of industry stakeholders included in this Review, almost all identified that the current 80:20 split of cost recovery between industry and governments was disproportionate and added significant burden to small organisations. Government stakeholders held the reverse opinion. There has been an ongoing recommendation from the 2015 Review, supported by industry stakeholders in 2021, to modify the split to 50:50 between industry and Australian governments. There could be an argument that non-compliance costs be recovered through penalties of non-compliance rather than charging all registrants. Ongoing reviews of this model are mandated through annual CRIS's. The Australian national Audit Office has stated:

> *agriculture have focused on consulting on the introduction of new or revised cost recovery arrangements and have not always updated their Cost Recovery Implementation Statements to support engagement on cost recovery of existing regulatory activities* (Australian National Audit Office, 2019).

If industry fees are to cover the costs of registration, as is done in the E3 registrations, then the 2020/21 budget forecasting showed that this was approximately 43% of Regulator costs, which includes a 50% share of overheads, with the remainder going to compliance costs. These proportions suggest that a 50% cost recovery through industry for the WELS Scheme better represents the WELS Regulator registration costs.

The 2015 Review (Water Efficiency Labelling and Standards Regulator, 2015a) and the 2018 environment and economic review (Institute for Sustainable Futures, 2018) support consistent industry registrant (and association) feedback that finds the burden on industry disproportionate across industry size. It identified that the burden was more pronounced in small business, as it may affect their competitiveness and limit their ability to introduce new products on to the market.

> *A significant proportion of product suppliers interviewed raised equity concerns about the funding of the WELS Scheme via registration fees. This approach to funding the scheme means that a large proportion of the scheme costs sit with wholesalers, importers, and manufacturers of WELS-rated products. The benefits of the scheme, however, can be seen to flow principally to customers in lower bills but also water utilities with a decreased need for supply system augmentations. Various interviewees made the case that on equity grounds, the state and territory governments and water utilities should fund WELS, rather than the plumbing products and appliance industries (Institute for Sustainable Futures, 2018)*.

This was reinforced by feedback received in this Review as shown in Figure 41. Just under half (n=14) of the survey respondents identified that the cost burden on industry was unreasonable, particularly for smaller companies; these respondents were all from businesses thought to have less than 200 staff. No registrant identified that the cost burden was reasonable, two of 24 registrants identified most of the cost was passed on to consumers and four registrants had no opinion. 67% of industry sellers and 50% of registrants surveyed believed the burden on industry was unreasonable.

> *Currently, we have estimated that compliance with Watermark and WELS adds at least 25% to the cost of a product. We are overregulated in this area paying registration fees to two Government Departments. Additionally, we must pay outrageous costs to compliance providers such as SAI Global, IAPMO etc.* [Industry/registrant stakeholder; less than 20 staff estimated]

The finding relating to the burden on small business was triangulated with analysis of the fee structure, which dictates a higher registration cost per model for organisations registering less models. Currently, smaller numbers of registrations penalise the registrant with higher per product type costs. It was suggested by small organisations (registrants) that the increased sales benefit they might achieve in publicising their product water efficiency with the WELS label was minimal. These findings should be tempered with an understanding that this is not an unexpected response from industry given their commercial motivations.

Effective information management, measuring, reporting and evaluating regulatory performance and continuous improvement, transparency and accountability

An analysis of recurring problems with submissions of registrations cannot be undertaken as these problems do not appear to be recorded at the time of registration assessment, and the data that are recorded are difficult to access. This renders information on registration issues unavailable for analytical scrutiny. It is possible, for instance, that registrants' misunderstanding or misinterpretation is a reason for recurring problems, although this cannot be corroborated.

Other Regulators reviewed have data and education strategies that align with the *Australian Government cost recovery guidelines* (Australian Government, 2021), which state:

> *A government entity should have a performance framework that is linked to government policy outcomes. It should determine operational outputs that can be used to measure progress in achieving those outcomes. The measures should:*
>
> - *include quantitative, qualitative and milestone information or be phrased in such a way that it is clear when the operational outputs have been produced*
> - *be authorised or endorsed by Ministers, accountable authorities or senior entity staff, whichever is appropriate*
> - *be documented and shared with stakeholders*
> - *be reviewed regularly and whenever policy changes are made to the activity.*

Multiple areas of external data exist but are not systematically accessed by the WELS Regulator: for example, CHOICE's consumer information on the changing usages of products, Sydney Water's information on washing machine water usage over time and retailers' information on product sales. Systematically drawing on data could be an opportunity for the WELS Scheme both to monitor the achievement of its objectives and to adapt to environmental changes.

The current ICT project triangulates this Review's findings in terms of potential improvements and promises to deliver multiple enhancements to process efficiency and access to data (Khan, WELS Current state analysis, 2020a). The high-level business requirements of the pending Request for Quotation (Khan, 2020, pp. 8,9) for this work notes the following regarding compliance management:

> *In the current state, it has been observed that all tasks are manually handled and there is no case management system in place. All records are recorded, maintained and updated in complex spreadsheets and electronic directories leading to inefficiencies, high possibility of losing important evidence, information and decisions outcomes.*
>
> *There is no process automation in place, making each allegation and case difficult to maintain, prioritise, update and are highly prone to human errors.*
>
> *Missing timely and accurate reporting highly contributes to inefficiencies in taking timely decisions by the senior executives and leads to lack of visibility and control to the overall compliance operations and workforce management. An absence of interrogable data and capture also results in other inefficiencies around risk/threat assessment and inspection planning.*

Limited internal operating procedures were available for this Review, apart from the Compliance Decision Tree to address non-compliance, the WELS Standard (Standards Australia, 2016a) and the WELS Act (Australian Government, 2013a). The 2018 Regulatory Overview (McGrathNicol, 2018b), which includes a WELS Scheme process flow, identified that the Scheme's self-assessment for core-regulatory function was at an overall 'managed' rating (positive). Such a rating includes having a 'well-documented method for managing its regulatory responsibilities' (McGrathNicol, 2018a). In contrast, E3 incorporates service commitments to:

- *process applications for registrations within 14 days from receipt*
- *notify applicants in writing if an application remains under consideration after 42 days* (GEMS Regulator, 2020, p. 1).

This was reinforced by the Internal Audit Report (Assurance Branch, Assurance and Legal Division. Department of Agriculture, 2019), which identified that internal monitoring was in place

for compliance and registration but that data reported was based on 'industry output, rather than the department' [performance] (2019, p. 8). The number of products registered is industry-driven and accordingly, there are difficulties in assessing performance of the Regulator on the basis of registration. Considerations for measures may include the percentage of applications reviewed within a certain number of days or the percentage of applications submitted for decision on first submission.

Consultation for the purposes of this Review identified the following:

- stakeholders from the Regulator identified the difficulty in accessing information on internal performance, including financial reporting against budget. Finance processes require long lead times (a one-month average to raise an invoice for a product registration, difficulty in accessing existing underspend), budgets for revenue and expenses must be separate, and real-time forecasting is not evident
- limited internal KPIs are tracked beyond the number of renewals/registrations, self-assessments (Department of Agriculture, Water and the Environment, 2019) and financial reporting. Lead times for renewal/registration, for instance, are either unknown, based on anecdotal information and/or are difficult to extract from the registration spreadsheets
- the most recent Department internal assessment was 2018/19, although a new framework is under development
- although registrations were expected to drop during the COVID-19 period, which would have detrimentally affected funding, no systemic, real-time mechanisms are in place to monitor the risk of a reduction in funding. In fact, the number of registrations was higher than previously, as evidenced in financial reporting that showed stable income from registrations (Water Efficiency Labelling and Standards Officials Group, 2020) and from an increase in registration numbers throughout 2018/19
- in terms of decision-making on the addition of products or addressing industry issues, while the Regulator has been found to be helpful when approached, issue resolution was primarily done on a case-by-case basis within teams rather than against defined criteria or using trends in application data resubmissions.

Regulator capability

In its self-assessment, the WELS Regulator indicated that it seeks to recruit staff with relevant expertise and ensure that their training needs are identified. To this end, it offers a range of relevant online training courses and requires that staff involved primarily in compliance and enforcement have, or obtain, a Certificate IV in investigations or equivalent. The WELS Regulator also indicated that it has Standard Operating Procedures for those in compliance roles (Department of Agriculture, Water and the Environment, 2019).

However, a number of industry stakeholders identified that staff within the WELS Regulator could benefit from having more technical plumbing knowledge, and that sometimes responses and directions from the WELS Scheme changed depending on who had been engaged in the request. It is noted that 1% of the 2020/21 WELS Scheme budget has been allocated to professional development and recruiting. Interviews with representatives from the WELS Regulator identified that there was some formal certification and on-the-job training underway with staff, and that the Department provides training outside of the WELS Regulator budget. The 2003 Australian Bureau of Statistics identified that typically government spends 1.7% on professional development alone (Australian Bureau of Statistics, 2003). No operational procedures were available for this Review, which may contribute to the differences in interactions with industry among staff (identified through multiple industry stakeholder groups).

> *It depends on who helps at [the WELS Scheme], skill level and motivation are different, sometimes seen as inflexible or not technical enough.* [Industry stakeholder]

In contrast, the 2018 review of regulatory processes identifies that 'staff responsible for core regulatory function are aware of, and understand, the method for managing the regulatory function' (McGrathNicol, 2018a).

5.3.2 Is the funding model and cost of the WELS Scheme appropriate and adequate?

The current Commonwealth policy on cost recovery is set out on the website of the Department of Finance (Australian Government, 2021). Of relevance:

> *Australian Government entities should generally set charges to recover the full cost of providing specific activities. Partial cost recovery, which occurs when less than the full cost of a government activity is recovered, may be appropriate in some circumstances where... the Australian Government has made an explicit policy decision to charge for part of the costs of an activity.*

For each cost-recovered activity, the responsible government entity must:

- have policy approval from the Australian Government to cost recover
- have statutory authority to charge
- ensure alignment between expenses and revenue
- maintain up-to-date, publicly available documentation and reporting.

In addition to the Commonwealth policy framework, this Section has incorporated discussion relating to:

- the cost recovery split between industry and government
- a scheme's ongoing benefit.[9]

Given that both policy approval and statutory authority to charge exist, these will not be discussed in detail, but the following does detail findings against other criteria.

Policy approval from the Australian Government to recover cost

The WELS Scheme's compliance with the Commonwealth policy on cost recovery (Australian Government, 2021) has some issues, primarily in the alignment of cost recovery to operational costs and the volatility of the income. It is also difficult to attribute water efficiency benefits to the WELS Scheme without further economic evaluation. According to the 2018 environment and economic review from the Institute for Sustainable Futures (Institute for Sustainable Futures, 2018) this attribution issue would require more deliberate monitoring of scheme effectiveness indicators in households, potentially utilising existing market and consumer body data. This is an area where performance criteria have also been identified in the 2019–20 Department Corporate Plan, namely, 'Water quality and flows, and ecosystem health are maintained or improved' (2020a, p. 28).

Statutory authority to charge

The WELS IGA provides for contributions by jurisdictions on the basis of 50% Commonwealth funding and 50% from the states and territories on a pro rata population basis. The level of funding provided by both is determined each year. The WELS IGA also requires the Commonwealth legislation to provide for 'possible cost recovery through the charging of application and licence fees, to the extent consistent with Commonwealth policy on cost recovery'.

[9] See Section 5.2 (Effectiveness) for level of WELS influence in the reduction of water consumption.

The administration of the WELS Scheme is funded through an agreed revenue budget based on projected costs and projected industry fee revenue (Department of Agriculture, Water and the Environment 2020a). The *Water Efficiency Labelling and Standards (Registration Fees) Act 2013* (Cth) enables the relevant Commonwealth Minister to set registration fees to recover 80% of the WELS Scheme's total expenses. Previously the fees were in the form of a fee for service authorised by the *Water Efficiency Labelling and Standards Act 2005* (Cth).

The cost-recovery arrangement consists of a tiered annual fee structure starting from $600 to register 1–5 products (equivalent to $120 per model for 5 products), through to $121,000 to register 2000+ products (equivalent to $60.50 per model for 2000 products) (Water Efficiency Labelling and Standards Regulator 2015). The variation in the fee per model between the tiers is designed to take into account both fixed-cost components (such as the product registration database) and variable-cost components (such as assessing applications, given it requires more employee resources to process a larger number of product registrations compared to a smaller number). There were no additional assessments of the funding arrangements in the literature.

Table 15: WELS fee revenue

Year	Fee revenue
2012/2013	$0.07m
2013/2014	$1.26m
2014/2015	$1.34m
2015/2016	$1.33m
2016/2017	$1.53m
2017/2018	$1.57m
2018/2019	$1.61m
2019/2020	$1.64m

Under Commonwealth policy on cost recovery (Australian Government, 2021), the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013* provides statutory authority to charge registration fees. The WELS Scheme also maintains up-to-date, publicly available information about its fee structure on its website (Water Efficiency Labelling and Standards Regulator, 2017b).

In 2016, the Compliance and Enforcement Policy (Water Efficiency Labelling and Standards Regulator, 2016) identified that in the previous year up to $1.5 billion of savings were attributable to the WELS Scheme. Similarly, the 2015 Review had identified a 2014–15 WELS Scheme budget of $1.96 million (Water Efficiency Labelling and Standards Regulator, 2015a), a return on investment of 765:1 if all savings could be realised. However, as pointed out in the 2018 environment and economic review of the WELS Scheme (Institute for Sustainable Futures, 2018) the attribution of these savings to the WELS Scheme is difficult to quantify, reinforcing concerns raised elsewhere in this Section. This uncertainty is included in the 2015 Review although identifying that modelling has attributed some savings to the WELS Scheme.

> *Modelling undertaken in 2008 and 2014 has estimated the actual and projected extent of water savings resulting from the Scheme (Figure ES1). While the trends are broadly consistent, and increasing, the 2014 estimates are higher, suggesting a saving of approximately 70,000 Megalitres (ML) in 2013, and as much as 204,000 ML could be saved in 2030. Cumulatively, this could potentially total 2,853 Gigalitres (GL) of water saved by 2030.[1] Savings attributable to the Scheme as of 2015 could have an economic value of up to $1.5 billion. If these projections to 2030 are correct, the value of water savings could be as high as $3.3 billion.[2] This means the total economic value of water savings could be as high as $4.8 billion (in 2015 dollars) (Water Efficiency Labelling and Standards Regulator, 2015a).*

Alignment between expenses and revenue

On the question of alignment between expenses and revenue, the WELS special account balance was well in excess of AU$5million at the end of the 2019–20 financial year (Water Efficiency Labelling and Standards Officials Group, 2020), over twice its annual budget value. It is suggested that the surplus will remain largely in place for the 2020/21 financial year result (despite

significant financial outputs including the commencement of the ICT project upgrade and the funding of civil proceedings currently under way). These figures, and the ongoing comparison of revenue versus expenses since 2015, suggest a current misalignment between expenses and revenue. It is recommended that the WELS Scheme continues to develop its spending forecasts and revenue projections in order to ensure that the current registration fee structure aligns between expenses and income.

Without an ongoing allowance for unexpected costs like litigation, the Regulator will be at risk of being unable to escalate non-compliance without a way to provide for and access funding to cover the expenses that would be incurred. Given litigation is within the WELS Scheme remit, an amount per year for mitigation could be included in the ongoing budget if a greater enforcement focus from the Regulator is planned.

That the underspend has existed since before 2014/15 should be considered against the *WELS (Registration Fees) Act 2013*, s. 8(2). This states that before making an instruction (to specify a registration fee), 'the Minister must be satisfied that it sets fees at a level that is designed to recover no more than the likely cost of administering the WELS Scheme (including the corresponding State-Territory Laws) (Australian Government, 2013, p. 4)'. There are some exceptions to this under the *Australian Government cost recovery guidelines* which read:

> *Australian Government entities should generally set charges to recover the full cost of providing specific activities. Partial cost recovery, which occurs when less than the full cost of a government activity is recovered, may be appropriate in some circumstances where:*
>
> - *charges are being 'phased in'*
> - *full cost recovery would be inconsistent with community service obligations endorsed by the Australian Government*
> - *the Australian Government has made an explicit policy decision to charge for part of the costs of an activity* (Australian Government, 2021).

While the surplus does not appear to support any of these reasons, the investment in the new ICT project upgrade has been in planning since 2019 and is forecast to consume the excess over the next three years. A mechanism to respond to over- or under-spends was not evident in the fee structure, where the revenue is driven by registrations that are variable year on year – although history demonstrates budget forecasts are close to receivables.

WELS Scheme ongoing benefit[10]

It can certainly be argued that the WELS Scheme offers great incremental and ongoing benefit, as outlined by one government stakeholder.

> *If looked at incrementally each year, the savings are quite small but [it's the] same fixed cost each year of delivering the program. At one point does that continued regulatory framework start not outweighing the additional water savings that you make each year?* [Government stakeholder]

As discussed in previous Sections, at least two industry small business stakeholders identified during this Review that it is not worth their investment to register a more efficient product with a higher rating, and that costs cannot always be directly applied to a product price, particularly for low-volume production. In addition, according to the 2018 environment and economic review,

[10] See Section 5.2 (Effectiveness) for the level of the WELS Scheme's influence in the reduction of water consumption.

registration of higher rated products also appears to be slowing (Institute for Sustainable Futures, 2018).

Given that the national and jurisdictional benefits are significant (WELS estimates $2 billion by 2030), the independent reviewers believe that it is fair and reasonable for the costs of the WELS Scheme to be levied more equitably on industry. Consumer savings in household expenses have been shown to be primarily in electricity. Thus, even with a 15% increase in water prices, consumers are more likely to buy based on product price and energy costs than on water efficiency (Institute for Sustainable Futures, 2018).

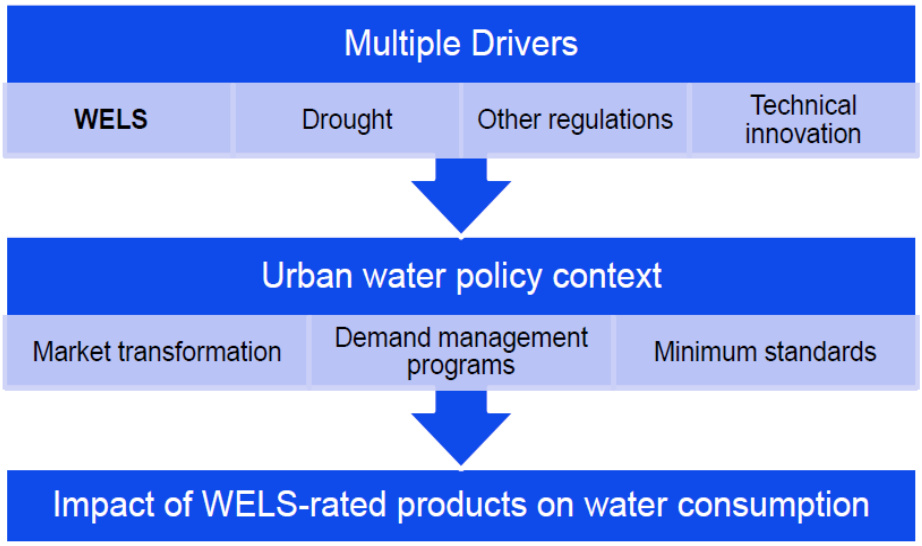
As explained in Section 4, it is difficult to attribute the WELS Scheme specifically to quantifiable water savings. However, there have been studies in 2009 (Willis, et al., 2009), 2011 (Beal & Stewart, 2011) and 2012 (Carragher, Stewart, & Beal, 2012) that point to its positive impact on lowering water consumption. The 2015 Review also identified that:

> *… [the WELS Scheme] is likely to have contributed to observed reductions in water consumption, with its water savings potentially having a cumulative economic value by 2030 as high as $4.8 billion (2015 dollars) (Water Efficiency Labelling and Standards Regulator, 2015a).*

Since then, the 2018 Institute for Sustainable Futures has estimated water savings due to the WELS Scheme of 112 gigalitres in 2017–18 (Institute for Sustainable Futures, 2018). However, the 2015 Review also highlighted that the biggest influence on water consumption had been the millennium drought.

Apart from environmental influences, there is a lack of data around the influence of WELS labelling on consumer product selection compared to price, appearance and branding, and the effects on water usage of public campaigning and rebates and structural constraints in homes. The 2018 environment and economic review shows there are multiple drivers of consumption, which means that any attribution of savings to the WELS Scheme alone is artificial (see Figure 42).

Figure 42: Water consumption influences



Source: Institute for Sustainable Futures, 2018

How could any potential expansion of the product range be funded?

The current appetite for changes to the WELS product range is explored in Section 5.1 relating to Design. However, it is accepted that the funding mechanism should be flexible enough to accommodate changes to the product range as required. In response to the 2015 Review, the Department identified that:

> *no methodology currently exists for water efficiency rating of the installation and operation of new products such as instantaneous hot water heaters and evaporative air conditioners. For this reason, no further expansion of the products covered by the WELS Scheme is proposed at this time. (Department of Agriculture and Water Resources, 2016, p. 1)*

According both to the interviews and the literature review, this remains the case given that any new product inclusion would mean modifications to the existing standards and systems. This is not to suggest that these changes should not be made; rather, that any changes would need to be justified in terms of the investment required and the anticipated benefit. Non-recurring costs and efforts, such as lead times in updating standards and educating industry of any changes, should be incorporated into Regulator budgeting and change management strategies.

It is recommended that any additional products or changes to the product range included in the WELS Scheme would undergo a business case assessment based on some of the findings in this Review: for instance, the impact on water consumption of any new products; and the additional value the WELS Scheme adds compared both to consumer behaviour – long showers, inefficient plumbing layouts in homes, old household construction – and to other schemes (WaterMark and E3).

Upon critical review of the value added by new products, it is recommended that the funding of their inclusion would be sourced through the same channels as other products, nominally through registration fees and state/territory funding. If the incremental cost to the WELS Regulator operations was higher than the anticipated income, this would need to be reviewed. The exact mechanism would depend on the outcome of the government/industry funding split and the ongoing structure and budget costs of the WELS Regulator following this Review and the ICT project upgrade.

5.3.3 Assessment of the efficiency and costs of the WELS Regulator and processes

A range of questions were considered in order to assess the efficiency and cost of the WELS Regulator and processes.

To what extent does the administration of the WELS Scheme meet benchmark principles of regulatory practice in terms of efficiency?

In order to assess the WELS Scheme's efficiency, the assessment criteria outlined in Table 16: Assessment criteria for WELS Scheme efficiency were applied. The outcome of this assessment is demonstrated in Table 17.

Table 16: Assessment criteria for WELS Scheme efficiency

Alignment	Requirement
Optimal	The WELS Scheme operation performs well within Commonwealth regulatory assessment frameworks including the Regulator Performance Framework. Internal monitoring and data strategies are in place and utilised to inform a compliance and education strategy, and to reflect and improve processes regularly by identifying where risks lie and where corrective actions are required. Internal stakeholders have the appropriate skills and instruction to understand the processes, with any areas of confusion quickly addressed. The WELS Scheme operations are very efficient, with no reworking, delays or duplication within the WELS Regulator processes or the Department. They are also streamlined and transparent. WELSAG communications are timely and not otherwise duplicated in other formal fora. Industry is clear about requirements, and between 90% and 100% of first-time-through registrations are approved. All stakeholders identify the WELS Scheme operation as being efficient and effective. Fit-for-purpose management and finance processes, as well as communications, are in place within the WELS Regulator and Department. Cost recovery and costs are closely aligned, incorporating improvement initiatives and changing conditions with financial reforecasting at least quarterly.
Managed	The WELS Scheme operation has elements that perform well within Commonwealth regulatory assessment frameworks. Internal monitoring and data strategies are in place but improvements would be beneficial. Staff have the appropriate skills and instruction to understand the processes, with any areas of confusion generally quickly addressed. The WELS Scheme operations are well documented but industry continues to experience delays and reworking. They are also streamlined and transparent. WELSAG communications are timely and not otherwise duplicated in other formal fora. Industry issues are tracked and resolved, and are shown to diminish over time as corrective actions are implemented. Most registrations are processed with no issues, first time through. Most stakeholders identify the WELS Scheme operations as being efficient. Fit-for-purpose management and finance processes, as well as communications, are in place within the WELS Regulator and Department, although some improvement initiatives have been unresolved for more than 12 months. The cost of managing the WELS Scheme is subject to full cost recovery through registration fees, incorporating changing conditions with a level of financial reforecasting throughout the financial year.
Sound	The WELS Scheme operations have some major underperforming areas within Commonwealth regulatory assessment frameworks, although improvements are planned. The processes are sound and documented but improvements are also planned. Consistent reprocessing of applications and registrations, and delays in the registration process, are systemic although the workflows are under review. Internal continuous improvement reviews, risk-based management and internal accountability measures may be ad hoc or under development. WELSAG communications are partially duplicated in other formal fora. There may be areas of confusion between industry and the WELS Regulator, but these are resolved as they occur. Over half of applications are approved first time through. Financial

	management is primarily conducted through external drivers such as Department reporting, but reforecasting may be ad hoc.
In transition	The WELS Scheme operations have significant underperforming areas within Commonwealth regulatory assessment frameworks, with some improvements planned. The processes are developing and may be only partially documented, which means they are sometimes misunderstood by internal and external stakeholders. WELSAG communications are partially duplicated in other formal fora. More than half of applications are approved first time through. Reworking and delays are typical in operational processes. Internal continuous improvement reviews, financial reforecasting, risk-based management and internal accountability measures may be ad hoc, if they exist at all. Financial management is primarily through external drivers like Department reporting.
Not meeting expectations	The WELS Scheme operations universally perform poorly within Commonwealth regulatory assessment frameworks. Internal processes and procedures are neither clear nor documented. Internal stakeholders identify multiple opportunities for improvement. The cost of managing the WELS Scheme is greater than the revenue with no plan in place to address this. Registration and compliance processes include significant rework, with reapplication of submissions. The processes may also have workflows that drive these. The WELS Regulator is either unable to or does not monitor these processes or implement continuous improvement measures, nor is their performance transparent to internal and external stakeholders. Less than half of applications are approved first time through. Internal and external stakeholders are often confused and are typically unable to resolve their confusion through contact with the WELS Scheme website or staff. WELSAG communications are generally duplicated elsewhere and the mechanism is unable to function due to its scope, terms of reference, membership or other issues. Most stakeholders identify the WELS Scheme operations and testing, registration and compliance processes as being inefficient.

There are elements of WELS Scheme administration that operate more efficiently than others. For example, the WELS Act and supporting documentation are very clear about the objectives of the WELS Scheme, and stakeholders are generally well engaged through WELSAG, WELSOG and other forms of communication with only a few outliers. A big gap is in understanding how efficiently processes like registration and industry feedback to queries operate as there is little data available from the current systems. The following assessment is made using the criteria in Table 16.

Table 17: Application of assessment criteria for WELS Regulator's administration efficiency

	Not meeting expectations	In transition	Sound	Managed	Optimal
Defining outcomes and priorities				WELS	
A risk-based approach to regulatory administration			WELS		
Effective stakeholder relationships				WELS	
Current process efficiency and industry burden		WELS			
Effective information management; measuring, reporting and evaluating regulatory performance; transparency and accountability		WELS			
Regulator capability			WELS		
Explanation and supporting evidence	There were few stakeholders (none in industry) who identified that the registration and compliance processes were efficient; this has been reinforced by the WELS Current state analysis report (Khan, WELS Current state analysis, 2020a). Limited internal KPIs were tracked and there was difficulty accessing performance data when requested. Effectiveness in monitoring the achievement of objectives was limited to external reviews rather than to continuous monitoring. Data are readily available through CHOICE, credit card sales information, utility and industry groups, but are not accessed to measure the effectiveness of the WELS Regulator. Assessment of the WELS Regulator within government was only available for 2018/19, and was a self-assessment. The review in 2018 (McGrathNicol, 2018b) also identified weaknesses in monitoring within the WELS Regulator operations. Efficiency issues are currently being mitigated through the development of a new ICT and performance framework, but processes could likely be improved to add value sooner. Industry stakeholders identified a need for ongoing technical professional development, e.g., in plumbing, within the WELS Regulator, as did staff. The 2021/22 budget identifies low professional development spending compared to the 2013 government baseline. Stakeholders in government and industry generally find the WELS Scheme's staff friendly and helpful but had difficulty with some of its systems, e.g., the current website and email contact.				

Is the funding model and cost of the WELS Scheme appropriate and adequate?

In order to assess the WELS Scheme's cost appropriateness, the assessment criteria outlined in Table 18 were applied. The outcome of this assessment is demonstrated in Table 19.

Table 18: Assessment criteria for WELS funding model

Alignment	Requirement
Optimal	The alignment between expenses and revenue is robust and managed. The funding model (80% industry: 20% government) has been found to be appropriate and adequate; broader population benefits continue to justify the expenses.
Managed	There are only minor areas where the alignment of expenses and revenue could be improved. Generally, the funding model cost recovery is appropriate and adequate; broader population benefits continue to justify the expenses although this may be diminishing.
Sound	There are minor areas where the alignment of expenses and revenue needs to be improved, potentially in planning or ongoing management. Only minor issues exist with the funding model; broader population benefits continue to justify the expenses although this may be diminishing or difficult to attribute to the WELS Scheme.
In transition	There are areas where the alignment of expenses and revenue needs to be improved. Some issues exist with the funding model; ongoing justification for the WELS Scheme expenses is both difficult to justify and possibly to quantify economically. The split of cost recovery between industry and government is identified as disproportionate compared to other schemes as are the proportionality of benefits.
Not meeting expectations	There are major areas where the alignment of expenses and revenue needs to be improved, potentially in planning or ongoing management. Major issues exist with the funding model. The benefit of the WELS Scheme cannot be quantified or does not justify the cost. The split of cost recovery between industry and government is found to be significantly disproportionate compared to other schemes as are the proportionality of benefits.

The funding model is found to have multiple opportunities for improvement in terms of its ability to align cost-recovery receivables more closely with the budget and to apportion costs more reasonably between industry and government. The following assessment is made using the criteria in Table 18.

Table 19: Application of assessment criteria for WELS funding model

	Not meeting expectations	In transition	Sound	Managed	Optimal
Policy approval and statutory authority to charge					WELS
Alignment between expenses and revenue			WELS		
Cost recovery split between industry and government	WELS				
Scheme ongoing benefit[11]		WELS			
Explanation and supporting evidence	The WELS Scheme's compliance with the Commonwealth policy on cost recovery (Australian Government, 2021) has some issues, primarily in the alignment of cost recovery to operational costs and the volatility of the income. It is difficult to attribute water-efficiency benefits to the WELS Scheme without further economic evaluation. The 2018 report (Institute for Sustainable Futures, 2018) also identified that the issue of cost recovery would require more deliberate monitoring of scheme effectiveness indicators in households, potentially utilising existing market and consumer body data. In the opinion of industry consulted in this Review over half identified the burden on industry as disproportionate; these inputs and literature suggest it is particularly the case for small organisations. There has been an ongoing recommendation from the 2015 Review, and from industry stakeholders in 2021, to modify the funding split between all Australian governments and industry to 50:50. In contrast, government stakeholders consulted for this Review identified that they would not like to see a fee increase for the states, territories and the Commonwealth from 20% to 50%.				

[11] See Section 5.2 (Effectiveness) for the level of the WELS Scheme's influence in the reduction of water consumption.

5.3.4 Conclusion

While the WELS Scheme, and in particular the WELS Regulator, are efficiently managing both the outcomes and priorities, and effective stakeholder relationships, there is capacity to improve current process efficiency as well as the Scheme's risk-based approach to regulatory administration.

To strengthen the current effectiveness and efficiency of the WELS Regulator, this Review recommends a range of improvements that include strengthening systems of communication with industry and incorporating WELS technical requirements into industry training programs, such as apprenticeships and qualifications.

In terms of operational efficiency, there are elements of WELS administration that operate more efficiently than others. The WELS Act and supporting documentation, for example, are very clear about the objectives of the WELS Scheme, and stakeholders are generally well engaged through WELSAG and WELSOG and other forms of communication. However, with little data available from the current systems, there is a gap in understanding how efficiently processes like registration and industry feedback to queries operate.

It is difficult to attribute water efficiency benefits to the WELS Scheme without further economic evaluation. The 2018 environment and economic review (Institute for Sustainable Futures, 2018) also identified this issue as requiring more deliberate monitoring of scheme effectiveness indicators in households, potentially utilising existing market and consumer body data. Internal monitoring and improvement mechanisms, and environmental (external) monitoring by the WELS Regulator, could also be strengthened. However, monitoring the achievement of objectives is limited to external reviews, rather than continuous monitoring, despite data being readily available through CHOICE, credit card sales information, utility and industry groups.

The current ICT project upgrade being implemented by the WELS Regulator promises great improvement in internal efficiencies and transparency of performance metrics. It also brings significant opportunities to redesign processes and achieve improvements rather than to carry over existing process issues into a new management tool.

Opportunities include:

- simplifying the registration system by aligning appliances with E3 and plumbing products with WaterMark
- having variants on the same application
- allowing re-registrations year-round
- stretching out renewal periods from 12 months to five years to be consistent with E3 and WaterMark (Australian Building Codes Board, 2017a) at five years, and Smart WaterMark at two years.

An unchanging product design is not likely to have changing performance characteristics and re-registration of products does not require retesting. Step improvements are also possible by tracking issues behind deficient applications, rationalising testing needs and reducing duplication in testing across WELS/WaterMark/E3.

The WELS Regulator can institutionalise the use of data-driven decisions more widely, with timely information on real-time performance. It is strongly recommended that these detailed redesigns be developed, documented and implemented regardless of the ICT project upgrade.

The WELS Regulator can also make significant enhancements to reduce the cost-recovery split between industry and government, which does not appear to be meeting the expectations of the

fee-paying industry. This Review recommends reducing the financial burden on industry in a number of ways, including through modification of the cost registration fee structure and streamlining the registration and compliance processes. The WELS Scheme could be enhanced to further comply with the Commonwealth policy on cost recovery (Australian Government, 2021), primarily around its alignment to operational costs and the volatility of its income stream.

The second independent Review of the WELS Scheme (Water Efficiency Labelling and Standards Regulator 2015) suggested amending the cost-recovery target to create a more equitable scheme. It recommended changing the target cost-recovery split between government and industry from 20:80 to 50:50, as this would ensure financial contributions more accurately reflected the distribution of benefits to different stakeholders. In response, the Department considered that the 20:80 cost-recovery split does not appropriately reflect the government's actual contribution but declined to amend it. Currently, the government covers the liability for all financial risk to the WELS Scheme with little or no capacity for industry to reduce this risk.

In the past, the Australian Government has provided additional funding to support the WELS Scheme when industry fees have been insufficient to ensure the efficient administration of the legislation. However, this does not appear to have been necessary since the change to the registration fee structure in 2013. Since that time, the WELS Scheme has run at a surplus every year.

This 2020 Review again recommends changing to a 50:50 cost split, with an equal apportionment of costs between industry and the government, and the proportional split between the Commonwealth and state and territory governments remaining the same.

CONCLUSIONS AND RECOMMENDED IMPROVEMENTS

6 CONCLUSIONS AND RECOMMENDED IMPROVEMENTS

The following Section draws conclusions based on the key findings outlined in this Review. It is anticipated that amendments will be required to the legislative and regulatory framework to implement this suite of improvements. It is also anticipated that as the broad range of cohorts invested in the WELS Scheme will be impacted by these improvements including the WELS Regulator, industry and consumers, implementation considerations will need to be supported by established mechanisms such as regulatory impact statements and cost benefit analyses, as appropriate. It is further anticipated that all recommended improvements will be considered by the existing governance structures in place for the WELS Scheme, including WELSOG and WELSAG. Some recommendations rely on the prior implementation of others. This should be considered when assessing the recommendations for implementation.

Stakeholder input

During the course of stakeholder consultations, there were 190 recommendations received through interviews and submissions and 63 recommendations made in surveys. Survey responses highlighted the communication and education of both consumer and industry cohorts as the most common recommendation. Notably, industry and consumers were more likely to identify opportunities to improve the WELS Scheme than government stakeholders (including staff within the WELS Regulator), and this was illustrated across all data sources.

Figure 43: Interviews and submissions findings – Top 10 recommendations (of 190)

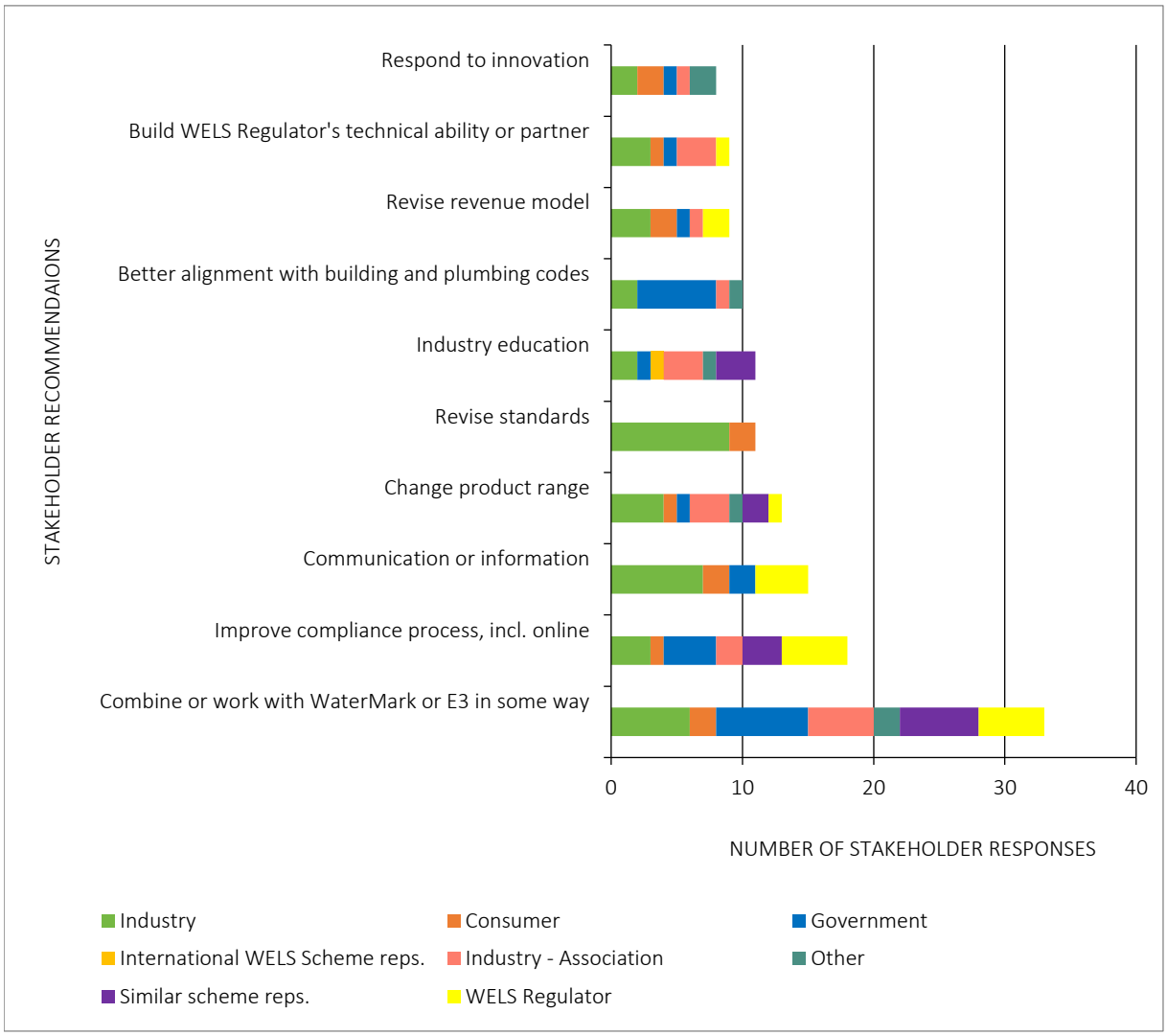
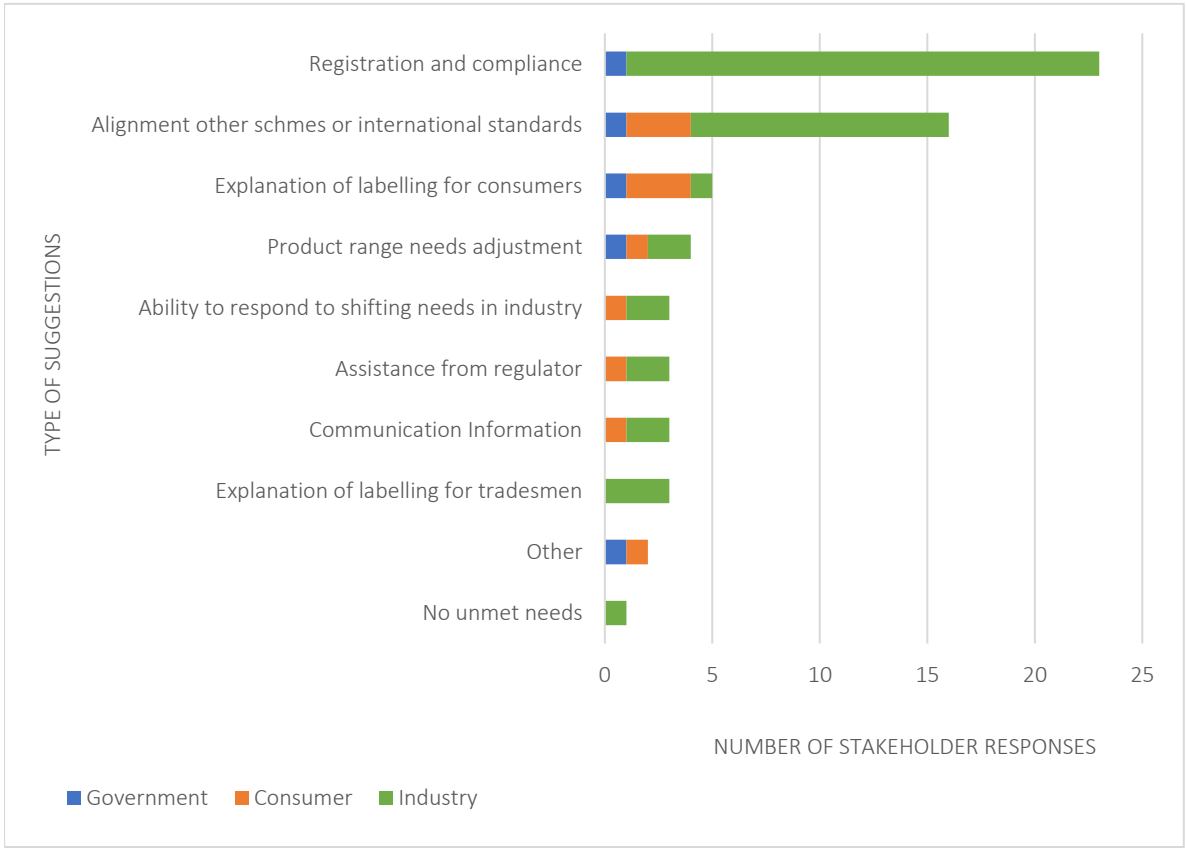


Figure 44: Survey findings – Stakeholder recommendations (n=29)



6.1. Relevance of the WELS Scheme's design

The objectives of the WELS Scheme remain appropriate and relevant to its goal of reducing water consumption. The point-of-sale requirements for plumbing products and appliances is a key strength of its design, which are not incorporated in WaterMark. Another key strength of the WELS Scheme is consumers' ability to recognise its labelling, primarily on appliances. This is somewhat influential in purchasing decisions, however the benefits to the consumer of investing in water-efficient products are not as obvious.

A key change that will improve the WELS Scheme's relevance for industry and, as a bi-product, consumers is a strengthening of alignment between the WELS Scheme, WaterMark, E3 and the National Construction Code which is expected to support registration, testing and compliance as well as broader communication about the Scheme. Aligning more with WaterMark for plumbing products and combining the WELS Scheme with E3 was the most frequent suggestion by stakeholders in interviews and submissions, with 32 people identifying the benefits of some level of alignment. The benefits of doing so have also become apparent following the review of relevant literature and resources.

Many stakeholders were of the view that WaterMark and the WELS Scheme should be combined for plumbing products, and the WELS Scheme and E3 combined for appliances. This duplication of effort across the various inter-related schemes appears to be contributing to industry frustration and an undermining of confidence in the WELS Scheme. Streamlining the schemes, and therefore mitigating the effort required by industry to comply with regulation, will likely support the relevance of the WELS Scheme for industry.

There are efficiencies that can be gained by incorporating E3 and the WELS Scheme under the same government department. Research and inputs during the Review identified that washing machines and dishwashers appear to have more in common with E3 and its associated product range than that of the WELS Scheme. In addition, neither appliance is within scope for WaterMark, which is a precursor for plumbing product WELS registration. As a result, greater alignment across all schemes is recommended.

Under the original scope of the ISO introduction, stakeholders suggested that the ISO Standard, when available, be used in place of the WELS Standard. At the time this Review was undertaken, there was a view that by relying on a common international standard, the overhead costs involved in the WELS Scheme maintaining a separate Australian standard would be removed. However, representatives of the WELS Regulator have indicated that the scope of the ISO Standard has recently changed towards more high-level guidance. Therefore, replacing the WELS Standard with the ISO equivalent may no longer have the same impact as previously anticipated, particularly if a national standard is still required. Depending on the proposed scope and impact of the development of the ISO Standard, reliance on this standardisation could significantly enhance the WELS Scheme.

6.1.1 Improvements that will support the WELS Scheme to remain relevant to, and effective for, industry and consumers

As described in Table 10 (assessment rubric), the WELS Scheme is strong in its clarity around objectives and the ongoing relevance of its objectives. The major opportunities exist in improvements within how the WELS Scheme complements and interacts with other schemes, and the WELS Scheme's consistency across state and territory regulations.

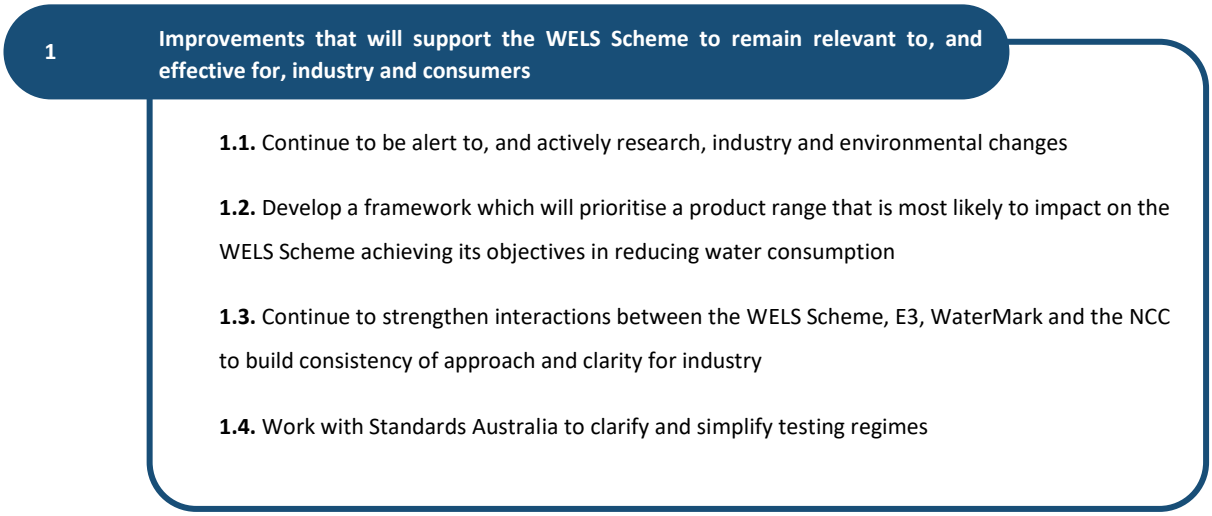
Table 20: Application of assessment criteria for WELS Scheme design and relevance

(Note: This is a subset of Table 10)

	Not meeting expectations	In transition	Sound	Managed	Optimal
The objectives of the WELS Scheme continue to remain appropriate					WELS
The design of the WELS Scheme continues to remain appropriate				WELS	
The WELS Standard continues to remain appropriate				WELS	
The WELS Scheme continues to be used as an eligibility requirement for other rebate or subsidy programs, and its use contributes to meeting the objectives of the WELS Scheme				WELS	
The WELS Scheme complements and interacts with other schemes			WELS		
Consistency of the WELS Scheme across state and territory regulations			WELS		

6.1.2 Recommendations

Figure 45: Recommended improvements relating to the WELS Scheme's design



The recommendations are elaborated on below:

Recommendation 1.1: Continue to be alert to, and actively research, industry and environmental changes

- This includes further research relating to:
  - consumer behaviour in purchasing higher rated products and how the consumer use of products might influence water usage
  - the value of the WELS Scheme to consumers in their product choices
  - the influence that the WELS Scheme is having on product design
  - the economic and non-financial benefits of the WELS Scheme, including the development of indicators that the WELS Regulator can incorporate into operational practice.

Recommendation 1.2: Develop a framework which will prioritise a product range that is most likely to impact on the WELS Scheme achieving its objectives in reducing water consumption

- This includes developing a framework upon which modifications to the product range can be determined factoring in research undertaken, the size of the market and the extent of market competition. The Framework should be:
  - validated by WELSAG and consumer groups
  - applied across all current and potential products so the WELS Scheme can help to prioritise products for testing, registration and compliance
  - applied so as to contribute to the ongoing assessment of minimum standards
  - developed alongside a business case template in which the cost of onboarding new products to the WELS Scheme (including revisions to the WELS Standard, consultation, education and label design) can be assessed against the estimated benefit of their inclusion and the proposed income likely from their registration.
- This includes reviewing the product range and considering whether products need to be added (including emerging technology such as programmable showers) or whether they

could be removed (particularly if their water efficiency depends on the time for which they are used, or if their WELS label is not always visible at point of sale including, for example, shower heads and taps).

Recommendation 1.3: Continue to strengthen interactions between the WELS Scheme, E3, WaterMark and the NCC to build consistency of approach and clarity for industry

- This includes exploring preliminary options for alignment between WELS and E3 through:
  - researching the economic and non-financial benefits of the WELS Scheme, including the development of indicators that the WELS Regulator can incorporate into operational practice
  - developing joint communications materials that compare water and energy efficiency of products side-by-side.
- This includes working with WaterMark to align sampling and other testing requirements to remove inconsistency; and working with state and territory jurisdictions to enable sharing of information between WELS Scheme and WaterMark compliance inspectors.
- This includes exploring options with states and territories and the ABCB to extend the integration of the WELS Scheme into the building requirements of the NCC; engaging closely with the committee to ensure the WELS Scheme and plumbing requirements of the NCC complement each other.
- For plumbing products, this includes exploring options for alignment between the WELS Scheme and WaterMark, including streamlining registration processes and joint compliance activities.
- For appliances, this includes exploring options for alignment between the WELS Scheme and E3 including:
  - streamlining registration processes to minimise repetition for industry, including whether the pending ICT project upgrade could be an opportunity to introduce some inter-operability between the registration processes and the development of a shared database
  - aligning the testing and sampling strategies
  - combining compliance activities
  - incorporating the regulation of E3 and the WELS Scheme within the same government department to streamline efficiencies.

Recommendation 1.4: Work with Standards Australia to clarify and simplify testing regimes

- This includes modifying testing and standards to address the limitations of testing flow controllers separately from taps and shower heads, as well as in assemblies that can subsequently be dismantled.

6.2. Effectiveness of the WELS Scheme

The WELS Scheme makes a significant contribution to reducing water consumption in Australia. However, there are difficulties with ascertaining to what extent the reduction in water consumption can be solely attributed to the WELS Scheme. This is due to other changes simultaneously being brought about by multiple water-saving initiatives, prevailing droughts and floods, and the contribution of household product savings compared to other influences such as building designs and consumer use of household products. Beyond the household, agriculture and commercial water use are also significant consumers of water.

There are also improvements that can be made to the design of the WELS Scheme and the WELS Standard to streamline the contributions that they can make to achieving the objectives of the Scheme. In addition, there are opportunities to strengthen the promotion of water-saving products and water efficiency through communication, particularly to consumers.

The objectives of the WELS Act (Australian Government, 2013a) relating to this include:

- providing information for purchasers of water-use and water-saving products
- promoting the adoption of efficient and effective water-use and water-saving technologies.

These two objectives provide the framework for communication to consumers, but with their significant overlap they could possibly be consolidated into one objective. Alternatively, their scope and expectations could be clarified to provide greater certainty in relation to their administration.

Additional consideration could be given to understanding consumer behaviour in order to target communication campaigns which influence water use beyond product selection. For example, even though the largest proportion of water savings comes from taps (Institute for Sustainable Futures, 2018), consumers identified that they were less likely to refer to, or even be aware of, water-rating labels when purchasing taps and spouts, with less than one in five referring to the label or star rating when choosing these types of products (Quantum Market Research, 2014).

There are however television advertisements encouraging use of dishwashers instead of hand washing and rinsing crockery/cutlery to save water and the previously run '3-minute shower' campaigns raised awareness during drought times in Victoria as an example. Particularly where consumer discretion in water use is high (taps and showers), this behaviour change will also impact water consumption, potentially more so than efficient fittings and could target the population, including those from diverse backgrounds day to day, not just when considering purchasing appliances or plumbing.

The WELS Regulator is in a position to support communication more broadly around the appropriate use of products in the WELS Scheme's range, to promote water efficiency – for example, by encouraging consumers to turn taps off or ensure washing machines have full loads – and to discourage products that use 'excessively high amounts of water from being sold in the Australian market' (CHOICE, 2021).

There are also opportunities to support further reduction of water consumption and better information for purchasers on water-saving products by modifying product labelling. The consumer value of incremental efficiencies within the current product range and the value to industry of registering at a higher rating are largely unquantified. It is suggested that the choice of products, and the application of a progressive star rating and/or minimum standard, should follow a decision-making process in which the value in expected water savings is compared to the

cost of implementing and maintaining this product within the WELS Scheme. While this will require further research to develop a workable model, it could then be regularly applied to validate WELS Scheme products against an environmental scan of technology and changing behaviour, or on a case-by-case basis as new products emerge.

6.2.1. Improvements that will support the effectiveness of the WELS Scheme

As described in Table 12 (assessment rubric), the WELS Scheme is relatively effective with continuing to add value through achieving its objectives; conserving water by reducing water consumption; and providing information to purchasers of water-use and water-saving products. The major opportunities exist in improvements within how the WELS Scheme reaches diverse communities; continues to promote and adopt efficient and effective water-use and water-saving technologies; and more accurate and credible WELS Scheme labelling.

Table 21: Application of assessment criteria for WELS Scheme's effectiveness

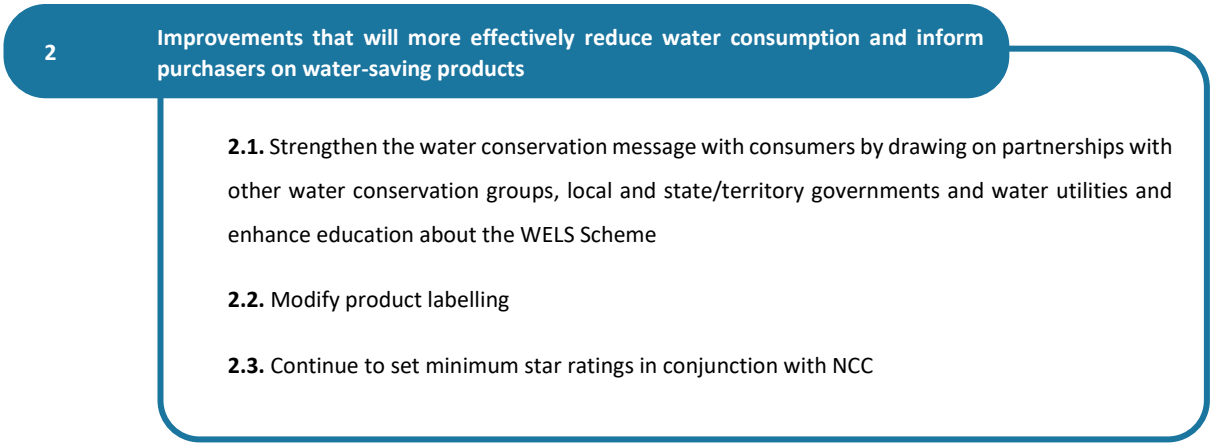
(Note: This is a subset of Table 12)

	Not meeting expectations	In transition	Sound	Managed	Optimal
The WELS Scheme continues to add value by achieving its objectives under the Act (overall assessment)				WELS	
The WELS Scheme continues to conserve water by reducing water consumption				WELS	
The WELS Scheme continues to provide information for purchasers of water-use and water-saving products				WELS	
The WELS Scheme continues to promote the adoption of efficient and effective water-use and water-saving technologies			WELS		

	Not meeting expectations	In transition	Sound	Managed	Optimal
The WELS Scheme is effective in reaching diverse communities		WELS			
Labelling associated with the WELS Scheme is effective in terms of its accuracy and credibility			WELS		

6.2.2. Recommendations

Figure 46: Recommended improvements relating to the WELS Scheme's effectiveness



The recommendations are elaborated on below.

Recommendation 2.1: Strengthen water conservation message with consumers utilising partnerships with other water conservation groups, local and state/territory governments and water utilities and enhance education about the WELS Scheme

- This includes designing and implementing projects in conjunction with other departments and agencies whose aim is to reduce water consumption. This may include cooperation on communications around smart structural designs to minimise water consumption, such as the location of hot water services within homes or the impact that home design could have on the water efficiency of products within the scope of the WELS Scheme.
- This includes supporting dissemination of education to industry and consumers in relation to the benefits that come from flow controllers so as to address issues or concerns around performance expectations and to prevent their removal at point of installation.
- This includes increasing education with industry to address misconceptions around testing cycles, aligning risk-based compliance planning (e.g. TVET/TAFE), and enforcing consistent and complete product labelling coverage in stores, by encouraging industry to provide links to the WELS Scheme on their websites and support compliance at point of installation.

Recommendation 2.2: Modify product labelling

- This includes consideration of product labelling which seeks to incorporate increasingly efficient products.
- This includes considering research and consumer testing of label designs with diverse cohorts and supporting the development of communication collateral to expand the reach of the WELS Scheme to people from diverse communities, particularly where English is not their first language or where literacy levels are low.
- This includes considering label modifications which:
    - include the setting on which the testing took place
    - identify the most water-efficient setting or program (for washing machines and dishwashers) if this differs from the setting that was used for testing
    - include load capacity.

Recommendation 2.3: Continue to set minimum star ratings in conjunction with NCC

- This includes consideration of the need to represent more efficient products with more granularity, perhaps with incremental stars, normalised rating system or resetting the minimum star performance levels.

6.3. Efficiency and Cost of the WELS Scheme

This Review recommends a range of improvements that seek to strengthen the effectiveness and efficiency of the WELS Regulator including: strengthening systems of communication with industry and incorporating WELS technical requirements into industry training programs, such as apprenticeships and qualifications.

While the WELS Scheme, and in particular the WELS Regulator, are managing both outcomes and priorities and effective stakeholder relationships, it has the capacity to improve current process efficiency as well as its risk-based approach to regulatory administration.

In terms of operational efficiency, there are elements of WELS administration that operate more efficiently than others. The WELS Act and supporting documentation, for example, are very clear about the objectives of the WELS Scheme, and stakeholders are generally well engaged through WELSAG and WELSOG and other forms of communication, with only a few outliers. However, with limited data available from the current systems, there is a gap in understanding how efficiently processes like registration and industry feedback to queries operate.

It is difficult to attribute water efficiency benefits to the WELS Scheme without further economic evaluation. The 2018 environment and economic review (Institute for Sustainable Futures, 2018) also identified this issue as requiring more deliberate monitoring of scheme effectiveness indicators in households, potentially utilising existing market and consumer body data. Internal monitoring and improvement mechanisms, and environmental (external) monitoring by the WELS Regulator, could also be strengthened. However, monitoring the achievement of objectives is limited to external reviews, rather than continuous monitoring, despite data being readily available through CHOICE, credit card sales information, utility and industry groups.

The current ICT project upgrade being implemented by the WELS Regulator promises great improvement in internal efficiencies and transparency of performance metrics. It also brings significant opportunities to redesign processes and achieve improvements rather than to carry over existing process issues into a new management tool, opportunities such as: simplifying the registration system by aligning appliances with E3 and plumbing products with WaterMark; including variants on the same application; allowing re-registrations year-round; and stretching out renewal periods from 12 months to five years. This would be consistent with E3 and WaterMark (Australian Building Codes Board, 2017a) at five years; Smart WaterMark is at two years. Step improvements are also possible by tracking issues behind deficient applications, rationalising testing needs and reducing duplication in testing across WELS/WaterMark/E3.

The WELS Regulator can institutionalise the use of data-driven decisions more widely, with timely information on real-time performance. It is recommended that these detailed redesigns be developed, documented and implemented regardless of the ICT project upgrade.

The WELS Regulator can also make significant enhancements to reduce the cost recovery split between industry and government, which does not appear to be meeting the expectations of the fee-paying industry. This Review recommends reducing the financial burden on industry in a number of ways, including through modification of the cost registration fee structure and streamlining the registration and compliance processes. The WELS Scheme has some compliance issues with the Commonwealth policy on cost recovery (Australian Government, 2021), primarily around its alignment to operational costs and the volatility of the income stream.

The second independent Review of the WELS Scheme (Water Efficiency Labelling and Standards Regulator 2015) suggested amending the cost-recovery target to create a more equitable scheme. It recommended changing the target cost-recovery split between government and industry from 20:80 to 50:50, as this would ensure financial contributions more accurately reflected the

distribution of benefits to different stakeholders. In response, the Department considered that the 20:80 cost-recovery split does not appropriately reflect the government's actual contribution but declined to amend it. Currently, the government covers the liability for all financial risk to the WELS Scheme with little or no capacity for industry to reduce this risk.

In the past, the Australian Government has provided additional funding to support the WELS Scheme when industry fees have been insufficient to ensure the efficient administration of the legislation. However, this does not appear to have been necessary since the change to the registration fee structure in 2013. Since that time, the WELS Scheme has run at a surplus every year. This 2020 Review again recommends changing to a 50:50 cost split, with an equal apportionment of costs between industry and the government, and the proportional split between the Commonwealth and state and territory governments remaining the same.

6.3.1. Improvements that will support the efficiency and cost of the WELS Scheme

As described in Table 12 (assessment rubric), the Scheme has well-defined outcomes and priorities, and the WELS Regulator has effective stakeholder relationships. The major opportunities exist in improvements with the current process efficiency and industry burden borne by the WELS Scheme, and how effectively it manages information.

Table 22: Application of assessment criteria for WELS Regulator's administration efficiency

(Note: This is a subset of Table 17)

	Not meeting expectations	In transition	Sound	Managed	Optimal
Defining outcomes and priorities				WELS	
A risk-based approach to regulatory administration			WELS		
Effective stakeholder relationships				WELS	
Current process efficiency and industry burden		WELS			
Effective information management; measuring, reporting and evaluating regulatory performance; transparency and accountability		WELS			
Regulator capability			WELS		

6.3.2. Recommendations

Figure 47: Recommended improvements relating to the WELS Scheme's efficiency and cost

3 **Improvements that will strengthen Regulator effectiveness and efficiency, particularly in registration and compliance**

3.1. Continue to build communication and education with industry, including annual compliance communications, and clarification of areas driving issues with registration and testing

3.2. Align processes with E3 for appliances and align processes with WaterMark for plumbing products

3.3. Drive continuous improvement in reviewing the star rating system, streamlining and strengthening registration practices and reducing non-compliance

3.4. Develop and implement a model that can review fee structures annually based on forecast expenditure and income

The recommendations are elaborated on below.

Recommendation 3.1: Continue to build communication and education with industry, including annual compliance communications, and clarification of areas driving issues with registration and testing

- This includes enhancing communications with industry (including online retailers) by:
  - supporting engagement between the WELS Regulator and industry through virtual teleconferencing, phone and email
  - supporting industry to report technological innovation back to the WELS Regulator
  - supporting industry to understand the technical requirements of the WELS Scheme, including in relation to alignment between E3 and WELS testing.
- This includes improving the waterrating.gov.au website including the product database and the search function therein.

Recommendation 3.2: Align processes with E3 for appliances and WaterMark for plumbing products to reduce the burden on industry, including a reduction in both the duplication of processes, which can lead to delays, and of cost

- This includes combining E3 and WELS labels across the range of WELS products and establishing a single Regulator across the E3 and WELS Schemes.

Recommendation 3.3: Drive continuous improvement in reviewing the star-rating system, streamlining and strengthening registration practices and reducing non-compliance

- This includes regulating to ensure that industry advertises all WELS Scheme rated products alongside their star ratings at point-of-sale (whether in physical premises or online.
- This includes operationalising monitoring regimes (including KPIs, reflections and improvement targets) to understand internal process bottlenecks and issues, as well as the external effectiveness of the WELS Scheme in achieving its objectives, and to capture baseline data relating to these prior to the implementation of the ICT project upgrade.
- This includes finalising the Compliance and Enforcement Strategy for 2021–2024, including institutionalising risk-based workplans for compliance in line with education and data strategies, with a framework upon which to base planning.
- This includes developing an annual workplan that is published on the waterrating.gov.au website, which highlights areas of priority.
- This includes continuing to work collaboratively to design the ICT project upgrade in support of revised processes, and to provide transparency and functionality that can horizontally and vertically scale the scope of the WELS Regulator by allowing for expansions or retractions in the number and type of products.
- This includes supporting compliance and enforcement by:
  - working with state and territory jurisdictions to enable sharing of information between compliance inspectors for the WELS Scheme and WaterMark
  - moving enforcement provisions to the Regulatory Powers Act when the WELS Act is next updated so as to facilitate consistency and clarity.
- Clarifying discretionary language in the WELS Standard where discretion means interpretations may differ among WELS Regulator staff.
- This includes reviewing changes in water consumption in the higher rated products and adopting a normalised star rating to accommodate increasingly efficient appliances and plumbing, with the top 10% of products receiving the highest star rating. This recommended improvement must be considered in the prevailing context and the star rating should be aligned with the ISO Standard when developed if it details this level of requirement. Consideration of how this could be implemented practically requires further analysis as constant reclassification and relabelling of stock is not practical.
- This includes considering the incorporation of a risk-based or value-based approach by only requiring testing and registering of those products and variants of products most likely to affect water consumption, and base testing sampling on that utilised by CAB/WaterMark/E3. Concentrate on products where:
  - discretionary use by households is minimised (where the water used by a product influences water use more than the person or system using it)
  - the testing cycles and products represent consumer-changing usage patterns.
- This includes institutionalising risk-based workplans for compliance in line with education and data strategies, with a framework for forward planning.
- This includes amending registration practices:
  - by allowing industry to register products within the WELS Scheme annually, 5-yearly or 10-yearly with the latter registration being the most expensive option;

this recommendation reflects the static nature of most product designs and incentivises innovation by supporting yearly registration as the most cost-effective option

- by streamlining the current two-step process for registering product variations.

Recommendation 3.4: Develop and implement a model that can review fee structures annually based on expenditure and income

- This includes monitoring and modifying the cost-recovery model by:
  - embedding the practice of ongoing monitoring of the economic and non-financial benefits of the WELS Scheme, including the development of outputs, and suggesting ongoing indicators that the WELS Regulator can incorporate within its operations
  - developing a mechanism to enable adjustments to the funding model based on costs budgeted, particularly as efficiencies in the ICT project upgrade and other areas are incorporated
  - incorporating real-time monitoring of registration fee income against budget with the ability to reforecast and adapt if required
  - reviewing the tiered fee model so that small registrant businesses are not disproportionately charged.
- This includes modifying the cost-recovery model to reflect beneficiary mapping and incorporate expected efficiencies that will likely be made with the introduction of the ICT project upgrade. This includes considering an equally divided 50% cost recovery split between government and industry (noting that this may be impacted depending on alignment with other schemes and the number of products within scope for the WELS Scheme). The final funding formula should be developed through consultation with industry.

APPENDICES

Appendix 1: Comparison of WELS label with international schemes' labels

Appendix 2: List of stakeholders consulted for this Review

APPENDIX 1: COMPARISON OF WELS LABEL WITH INTERNATIONAL SCHEMES' LABELS

Table 23: Comparison of the WELS Scheme with three selected international schemes

Criteria	Australia (WELS)	Singapore (MWELS)	China (CWCC)	New Zealand (WELS)
Sticker				
Year	2005	2009	2002	2005
Products covered	• Toilets and urinals •Taps • Showers • Flow controllers • Dishwashers • Washing machines • Flow control devices (voluntary)	Mandatory: Basin taps and mixers, sink taps and mixers, bib taps and mixers; dual flush low-capacity flushing cisterns; urinal flush valves/waterless urinals; washing machines and dishwashers (for household use). Voluntary: Showerheads.	Covers nearly 40 types of products (62 different categories in total)	• Lavatory and urinal equipment • Taps • Showers • Dishwashers • Washing machines

Criteria	Australia (WELS)	Singapore (MWELS)	China (CWCC)	New Zealand (WELS)
Product performance criteria and testing	Testing conducted in line with requirements for the Australian standard relevant to the product in AU and NZ Standard 6400 Must be tested by a laboratory accredited by the National Association of Testing Authorities (NATA) or an affiliated international body	Must be tested in a laboratory accredited by the Singapore Accreditation Council or its mutual recognition arrangement partners	Certificates issued by China Quality Certification Center	AS/NZS 6400 sets out the tests that must be performed on products to determine the information for WELS labelling The New Zealand Regulations do not specify who can carry out testing; however, IANZ accreditation or equivalent is required for test reports to be accepted for registration under the Australian scheme
Labels	• Six-star rating system • Show in-store, online and as part of new building or renovation, at all points in the supply chain • water consumption or flow rate • licence number • registered company name • product-specific information in accordance with the standard • For white goods: brand ID, model ID and test program setting	• Four-tick rating system where 1 tick is less water efficient and 4 ticks is most water efficient • Shows water consumption, wash programme, type, brand and model, and the registration number • Label affixed to each product displayed	• A quality mark, not a rating system	• Six-star rating indicates water efficiency of the appliance • Water consumption or water flow

Criteria	Australia (WELS)	Singapore (MWELS)	China (CWCC)	New Zealand (WELS)
Sector origin	• Mandatory, government-led scheme All regulated products supplied in Australia are required by law to be registered and labelled in accordance with the WELS Standard	• Mandatory, government-led	• Voluntary, industry-led	• Mandatory, government-led Unlike in Australia, in New Zealand no minimum water performance requirements have been set New Zealand does not require products to be registered and so does not operate a product registration system
Significant Scheme changes since 2015	As outlined above. Subject to Review	• Minimum water efficiency standard for washing machines raised from 1-tick to 2-ticks in October 2015 and 1-tick for taps/mixers in 2017 • A 4-tick rating within the 3-tick rating group allowing for finer differentiation of water efficient washing machines introduced in 2017 • Since April 2019, sales, supply and installation of at least 2-tick water fittings mandated in all new and existing domestic premises undergoing renovation • Dishwashers included in MWELS since October 2018	• Measures for Water Efficiency and Labelling Management issued in September 2017 • Sitting toilet first product to be covered as mandatory policy in August 2018 • An evaluation of the water rating label in 2017 found that it had conserved 5.28 million m^3 of water resources	• The Consumer Information Standards (Water Efficiency) Regulations 2017 were introduced and replace the Consumer information Standards (Water Efficiency) Regulations 2010

Source: IWA Efficient Urban Water Management Specialist Group, 2019

APPENDIX 2: LIST OF STAKEHOLDERS CONSULTED ON THIS REVIEW

State, territory and national governments

1. Australian Small Business and Family Enterprise Ombudsman
2. Australian Department of Agriculture, Water and the Environment, WELS Regulator
3. Victorian Building Authority

As well as relevant representatives from the:

4. Australian Capital Territory (ACT) government
5. New South Wales (NSW) state government
6. Queensland (QLD) state government
7. South Australian (SA) state government
8. Tasmanian (TAS) state government
9. Victorian (VIC) state government
10. Western Australian (WA) state government
11. Northern Territory (NT) government

Industry

12. Australian Industry Group (Ai Group)
13. Argent
14. Barben
15. Brasshards
16. Bunnings Group Ltd
17. Caroma
18. Conserv
19. Consolidated Brass Tapware (CB Ideal Tapware Pty Ltd)
20. Industry consultant
21. Consumer Electronics Suppliers Association
22. Electrolux Australia
23. Ewing Industries
24. Galvin Engineering
25. Gentec Australia
26. Global Tapware
27. Gro Agencies Pty Ltd
28. GWA Group

29. Harvey Norman
30. Housing Industry Association
31. Master Builders Association
32. Master Plumbers Australia and New Zealand
33. Neoperl
34. Plumbing Industry Climate Action Centre
35. Plumbing Products Industry Group
36. Rainware
37. Ramtaps Pty Ltd
38. SAI Global
39. Standards Australia
40. Targeted Management Services
41. Tradelink Plumbing Supplies

Consumer advocacy group

42. CHOICE

Relevant environmental and water associations

43. Australian Water Association
44. Water Services Association of Australia

Similar scheme representatives

45. Australian Building Codes Board (for NCC and WaterMark)
46. Australian Department of Industry, Science, Energy and Resources (for E3)
47. Smart Approved WaterMark

Utility companies

48. Sydney Water
49. VicWater

International WELS Scheme representative

50. New Zealand Ministry for the Environment

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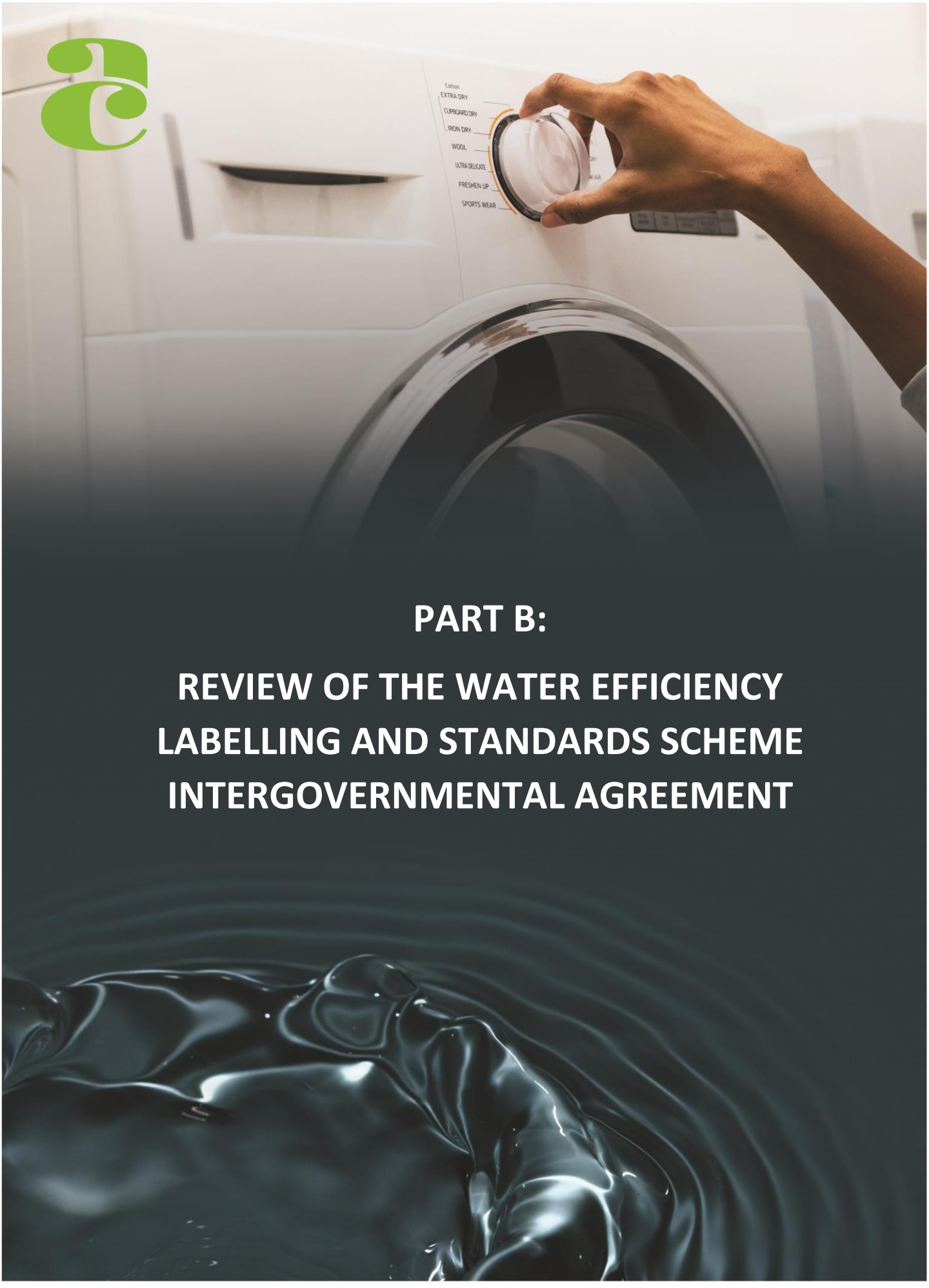


PART B:

REVIEW OF THE WATER EFFICIENCY LABELLING AND STANDARDS SCHEME INTERGOVERNMENTAL AGREEMENT

ALLEN+CLARKE CONSULTING

GLOSSARY

ACT	Australian Capital Territory
COAG	Council of Australian Governments
CTH	Commonwealth Government
The Department	Department of Agriculture, Water and the Environment
IGA	Intergovernmental Agreement
ISO	International Organization for Standardization
MEM	Meeting of Environment Ministers
NSW	New South Wales
NT	Northern Territory
Party to the IGA	Parties to the IGA include the Australian Government and all Australian state and territory governments
QA	Quality Assurance
QLD	Queensland
SA	South Australia
TAS	Tasmania
VIC	Victoria
WA	Western Australia
WELS	Water Efficiency Labelling and Standards
WELSAG	Water Efficiency Labelling and Standards Advisory Group (Industry)
WELSAC	Water Efficiency Labelling and Standards Advisory Committee (previous name for WELSOG)
WELSOG	Water Efficiency Labelling and Standards Officials Group

EXECUTIVE SUMMARY

The Water Efficiency Labelling and Standards Intergovernmental Agreement was signed in 2005 as a precursor to establishing a nationally consistent water efficiency product labelling scheme. This agreement between the Commonwealth, states and territories of Australia laid the foundation for what was to follow: the creation of the Water Efficiency Labelling and Standards Scheme. This was achieved through passing eight Acts, the establishment of a national Regulator, and the development of a single registration system to provide for consistent, mandatory water efficiency standards for specific products across the country.

The WELS Scheme has been reviewed in 2010, 2015 and now again in 2020. The states, territories and Australian governments have accepted and implemented most recommendations from the 2010 and 2015 reviews. The IGA, however, has not been reviewed, or amended, since 2005.

The Department of Agriculture, Water and the Environment has commissioned this IGA Review to consider the design, effectiveness and efficiency of the IGA. The Review was carried out in conjunction with the 2020 Review of the WELS Scheme. The reviewers interviewed 14 stakeholders, encompassing representatives from the Department, the WELS Regulator, and state and territory representatives on the WELS Officials Group (WELSOG).[12] These interviews were accompanied by a literature review, legislative comparison and an examination of WELSOG governance documents since 2015, including minutes, attachments and other relevant documentation. Insight was also gained from online surveys and submissions.

This Review is structured into three broad areas which each correspond with their own findings, conclusions and recommendations. These areas include the design of the IGA, the effectiveness of the IGA and the efficiency and cost of the IGA.

Design

Effectiveness

Efficiency + Cost

- **Design:** To what extent the overall design of the IGA continues to be appropriate?
- **Effectiveness:** To what extent does the administration of the IGA achieve its objectives?
- **Efficiency and Cost:** To what extent is the administration of the IGA, including the operation of WELSOG, implemented efficiently?

Method

The methodology is largely common across the WELS and the IGA Reviews. Each used key questions within a context that was informed by a literature review and stakeholder engagement. Stakeholder feedback was also collected through online submissions against questions set out in a Discussion Paper, included as an appendix to the WELS Review.

[12] This was formerly known as the WELS Advisory Committee.

Data collection included the following methods and sources:

Key informant interviews were conducted with a total of 14 representatives from the Department, the Regulator, and state and territory officials involved in WELSOG. Interviews used a semi-structured format. Quotes used in this Review may not be verbatim as they have not been validated with the relevant stakeholders.

WELSOG and WELS Scheme documents were reviewed covering WELSOG meetings from 2015–2020. This included the agenda, minutes and supporting documents, and annual reports by the Department covering WELS Scheme activities.

A **literature review** was conducted in two stages covering the relevant literature on intergovernmental agreements, and examining other reviews on similar schemes. An initial rapid literature review that included at least 90 references was conducted for the IGA Review and the WELS Review, and then expanded upon during the course of both Reviews. The assessment criteria in this report is based on the literature review.

A **legislative review** was conducted comparing Commonwealth, state and territory legislation to determine any inconsistency between the Acts that could have a detrimental impact on the WELS Scheme.

Questions on the IGA were included in the survey component of the public consultation process but generated no input. Full details of this consultation process can be found in the WELS Review.

Conclusion and recommendations

This Review found that the design of the IGA was fit for purpose at its inception but that as the Scheme has matured and jurisdictions have implemented legislation, it could now benefit from associated enhancements. In terms of effectiveness, the IGA has been effective in establishing a nationally consistent water efficiency labelling scheme and in communicating with state and territory stakeholders. The IGA achieved its goal of mutual recognition within Australia and has led to the development of an international standard that is likely to export the WELS model beyond Australia.

As the WELS Scheme has matured from establishment to reform and implementation, the IGA has lost its relevance to the WELS Scheme. While some of the IGA's clauses contain references to disestablished intergovernmental architecture, more importantly, the WELSOG has a less significant role in the implementation of the scheme than it once had. This Review recommends the IGA be maintained and modernised to revitalise the role of the states and territories in the WELS Scheme. This would also be an opportunity to task its governance body with considering appropriate ways to include the voices and needs of diverse groups in the governance and design of the WELS Scheme.

Over time, as the WELS Scheme has been reformed, some inconsistencies have emerged between Commonwealth, state and territory legislation. The effect of these inconsistencies may not be

significant, but the reviewers recommend the Parties to the IGA consider the value of amending these laws to ensure national consistency.

In general, the state and territory representatives were satisfied with the efficiency of WELSOG's processes. They were largely fit-for-purpose, although some agenda items progressed slowly – particularly where cooperation was needed from state and territory agencies or organisations not represented on WELSOG. The WELSOG would benefit from a sharper focus on delivering improvements to the WELS Scheme in a timely fashion, especially those that go directly to issues of cooperation and consistency across jurisdictions. This could be facilitated by a greater range of state and territory Regulators becoming involved in WELSOG in some form (for instance, a plumbing working group).

The efficiency and costing review of the WELS Scheme suggests that the WELSOG could also incorporate budget and communications planning. Additionally, a closer matching of the WELS generated revenue against costs could better meet Regulator best practice.

There will always be a degree of unpredictability in the WELS Scheme's revenue from industry fees. However, there appears to be room to improve its cost recovery performance to ensure greater alignment between expenses and revenue, in accordance with the Australian Government Cost Recovery Guidelines.

Overall, the WELS IGA has delivered its original intention through the establishment of jurisdictional legislation that corresponds to the WELS Act and the development of the WELSOG governance group. The WELSOG facilitates WELS Scheme oversight, communication and inter-jurisdictional co-operation. The WELS Scheme supported by the IGA, is now mature and it is now an appropriate time to refresh both the technical and non-technical aspects of the IGA to ensure that it remains fit for purpose, and supports the efficient maintenance of the WELS Scheme into the future.

The conclusions and recommendations of the Review are grouped thematically as follows:

Recommendation 1 - Update the IGA in order to support the WELS IGA to remain relevant by:

- correcting outdated references
- embedding WELSAG as a forum for industry and consumer engagement
- including a specific mandate for WELSOG to consider the issue of inclusivity
- tasking WELSOG with considering appropriate ways for the WELS Scheme to reach all Australians

Recommendation 2: Drive five yearly reviews of the IGA

Recommendation 3: Implement improvements that will support the administration of the IGA including:

- considering whether current legislative inconsistencies justify amending relevant laws and if so, the best way to do this
- preparing annual operating plans to assist with planning
- considering involving additional Regulators, such as for the plumbing industry, to advance reforms of the WELS Scheme
- adding a stronger focus on delivering improvements within specific timeframes within WELSOG.

Recommendation 4: Implement improvements that will strengthen the efficiency of the administration of the IGA and WELSOG including:

- continuing to hold WELSOG meetings virtually and, where possible, sequencing them to be held after WELSAG meetings or forums
- reconsidering the WELS Scheme registration fee structure to ensure better alignment between expenses and revenue
- publishing the existing IGA and any updates online

1 INTRODUCTION

1.1 The genesis of the IGA

The Water Efficiency Labelling and Standards (WELS) Intergovernmental Agreement (IGA) was signed in 2005 by the Australian Government and all state and territory governments. The IGA sets out the intergovernmental agreement between jurisdictions to establish a nationally consistent legislative scheme for mandatory water efficiency product labelling and standards (Australian Government, 2005). The full text is attached as Appendix 1.

The agreement follows a well-established Australian regulatory model intended to 'combine the authority of two or more jurisdictions to pursue a mutually agreed outcome' (Saunders, 2005, p. 294). In this instance, the Parties to the IGA agreed to draw on the legislative power conferred by the respective Commonwealth, state and territory parliaments, to create a single, consistent water efficiency labelling and standards scheme across Australia.

The IGA is not legally binding or enforceable by any entity. However, its sets out the commitment of Australian governments to establish the WELS Scheme and to act and cooperate in good faith.

In its preamble, the IGA recognises that it was made against the following context:

- recognising the need to identify new means of conserving water, the Parties have agreed that legislation should be introduced for water efficiency labelling and standards, including minimum standards
- the Australian Government and the states and territories agree that the legislative scheme should be nationally consistent, drawing on legislative power conferred by the Commonwealth, state and territory parliaments
- in the interests of implementing an efficient and effective regulatory system for mandatory water efficiency labelling and standards, including minimum standards, the Commonwealth and the states and territories have agreed that the national legislative scheme should be administered on a cooperative basis (Australian Government, 2005, p. 1).

1.2 Key elements of the IGA

The IGA is primarily concerned with establishment activities. For instance, it sets out the key elements to be included in Commonwealth legislation, including establishing a WELS Regulator and enabling states and territories to confer functions and power on the Regulator to the extent permitted constitutionally. Similarly, under the IGA, states and territories commit to passing legislation and conferring functions and powers on the Regulator.

The IGA sets out commitments for the ongoing maintenance of the WELS Scheme, which includes the establishment of an Advisory Committee (now WELSOG) consisting of representatives from each Party. Their role is to oversee the implementation of the WELS Scheme, provide a forum for consultation, give advice to the Regulator or responsible Commonwealth Minister, and annually develop a work plan, a compliance and enforcement plan, and a budget.

The IGA also covers funding arrangements between Parties, 'namely 50% Commonwealth funds and 50% from the States and Territories on a *pro rata* population basis' (Australian Government, 2005, p. 7), with provision made for potential cost recovery from industry (with detail to follow).

In the IGA itself, the Parties also committed to reviewing the IGA and the Scheme concurrently at an interval of no more than five years (Australian Government, 2005, p. 9).

1.3 Purpose of the IGA Review

The WELS Scheme has been independently reviewed in 2010 and 2015, but this IGA Review will be the first dedicated to assessing and reporting on the implementation and effectiveness of the IGA instrument itself, including:

- the extent to which the WELS Scheme establishment activities, as identified in the IGA, have been achieved
- the effectiveness of the WELSOG (formerly the WELS Advisory Committee) in delivering:
  - committee functions
  - proceedings of the committee
- the effectiveness of both the funding arrangements and information exchange between the Parties to the IGA
- the effectiveness of 'use of funds' arrangements to further the objects of the WELS Scheme.

This Review also assesses and reports on:

- gaps and potential improvements to the IGA to improve support for the objectives of the WELS Scheme
- potential administrative changes to the IGA that reflect, and give effect to, contemporary arrangements under the IGA and the WELS Scheme.

Regulatory context

The IGA Review is undertaken against the backdrop of the COVID-19 pandemic. In response to the pandemic, Commonwealth, state and territory governments significantly reformed their intergovernmental architecture at the Ministerial level by replacing the Council of Australian Governments (COAG) with the National Cabinet and the National Federation Reform Council (Australian Government, 2020).

The driver for this was to promote more efficient and effective relations between the Commonwealth, states and territories. Not only have meetings moved online but, more significantly, there has been substantial streamlining of the frequency, agendas and associated bureaucracy of intergovernmental architecture (Conran AM, 2020). This provides important context against which to consider the design, effectiveness and efficiency of the IGA.

1.4 Report scope and structure

As the IGA Review and the 2020 Review of the WELS Scheme (the Review) were undertaken concurrently, and the two are closely related, there is overlap between the two reports. For clarity:

- WELSOG is primarily covered within this Review. It gives effect to the IGA requirement for an intergovernmental committee, even though it is also relevant to the functioning of the WELS Scheme
- the funding of the WELS Scheme is primarily covered by the WELS Review, given that the majority of its funding comes from industry registration fees. Consideration of state and territory contributions is included under this Review, as relevant

- the consistency of legislation across the jurisdictions is covered in both Reviews as appropriate.

The remainder of the IGA Review is structured as follows:

- Section 2 presents the methodology, including the development of an assessment criteria for the IGA, data collection sources and limitations of the Review
- Section 3 presents the findings of the assessment criteria, structured under the themes of Design, Effectiveness and Efficiency
- Section 4 outlines the conclusions and recommendations
- Report appendices include the text of the IGA and a reference list.

2 REVIEW METHODOLOGY

2.1 Methodology

The methodology is largely common across the WELS and the IGA Reviews. Each used key questions within a context that was informed by a literature review and stakeholder engagement. Stakeholder feedback was also collected through online submissions against questions set out in a Discussion Paper, included as an appendix to the WELS Review.

The IGA Review considered the workings of the intergovernmental agreement, including an assessment of its effectiveness and ability to meet its intended purpose. The effectiveness and efficiency of the IGA was reviewed in terms of the committee functions and proceedings, the funding arrangements and information exchange between the Parties. The IGA Review also sought to identify gaps and potential improvements to the IGA so it can better support the objectives of the WELS Scheme.

2.2 Developing an assessment criteria framework

The WELS Review developed an assessment criteria framework for the three key themes:

Design **Effectiveness** **Efficiency**

For each theme, up to five relevant elements for assessment were drawn from a combination of broader government guidance and other reviews of intergovernmental agreements. The assessment criteria also borrowed the maturity rating model used in the Regulator Performance Framework (Commonwealth of Australia, 2014).

Table 24: Regulator maturity rating

Maturity rating	Requirement
Optimal	Comprehensive regulatory systems and processes. Demonstrated achievement.
Managed	Comprehensive regulatory systems and processes. Minor achievement issues. Corrective action in place.
Sound	Sound regulatory systems and processes. Some achievement issues or limitations in assessing Regulator performance.
In transition	Limited regulatory systems and processes. Significant achievement issues and/or limitations in assessing Regulator performance.
Not meeting expectations	Regulatory systems and processes highly limited. Performance not assessed or limited.

This model of maturity ratings is familiar to the Department, having been used in regular self-assessments by the Department and its predecessor organisations (Australian Government, 2021). It is useful in that it can suggest room for improvement on a more dynamic scale that reflects the level of maturity of Regulators. This Review adapts this framework into the three themes to incorporate requirements that are relevant to the IGA for each maturity scale.

The data collected during the IGA Review was synthesised and assessed against these elements to understand the appropriateness of the design as well as the effectiveness and the efficiency of the IGA. Through this assessment, the Review identified gaps and opportunities for improvement.

2.3 Data collection methods

Data collection included the following methods and sources:

Key informant interviews were conducted with a total of 14 representatives from the Department, the Regulator, and state and territory officials involved in WELSOG. Interviews used a semi-structured format.

WELSOG and WELS Scheme documents were reviewed covering WELSOG meetings from 2015–2020. This included the agenda, minutes and supporting documents, and annual reports by the Department covering WELS Scheme activities.

A **literature review** was conducted in two stages covering the relevant literature on intergovernmental agreements, and examining other reviews on similar schemes. An initial rapid literature review that included at least 90 references was conducted for the IGA Review and the WELS Review, and then expanded upon during the course of both Reviews. The assessment criteria in this report is based on the literature review.

A **legislative review** was conducted comparing Commonwealth, state and territory legislation to determine any inconsistency between the Acts that could have a detrimental impact on the WELS Scheme.

Questions on the IGA were included in the survey component of the public consultation process but generated no input. Full details of this consultation process can be found in the WELS Review.

2.4 Strengths and limitations

There were some limitations in data collection for the IGA Review. Given the IGA has not been updated since 2005, WELSOG representatives were more familiar with, and interested in, opportunities to improve the WELS Scheme itself. To mitigate this, the reviewers interviewed some key stakeholders twice – once to focus on the Scheme and once to focus on the IGA.

Similarly, while questions on the IGA were included in the online survey, no views from the public were received. This reflects that the IGA is largely an internally facing document.

Further, quotations used in this report may not be verbatim quotes as they have not been validated with stakeholders interviewed.

3 REVIEW FINDINGS

This Section outlines the key findings of the IGA Review, following the three themes of Design, Effectiveness, and Efficiency.

3.1 Design of the IGA

Design

Effectiveness

Efficiency

3.1.1 Assessment criteria to consider the design of the IGA

This Review theme considers the extent to which the overall design of the IGA continues to be appropriate. There are five elements for the assessment criteria relating to design.

Constitutional source of the IGA

Does the IGA have a constitutional source?

This question assesses whether the IGA is 'consistent with other constitutional rules capable of applying to it to mitigate potential litigation and assist consistent implementation.' (Saunders, 2005, p. 301). It acknowledges that the Commonwealth must have constitutional power to participate in the IGA.

Requirement as a mechanism to support the Scheme

Is the IGA required as a mechanism not otherwise available to facilitate objectives?

In most cases, 'the legislation can be defended (or impugned) independently of the agreement, by reference to a substantive head of power or, in the case of State legislation, to State power' (Saunders, 2005, p. 301). Accordingly, the value of the IGA as a stand-alone mechanism must be validated.

Involvement of non-government stakeholders in the IGA

Are stakeholders involved in the IGA and is the IGA accessible to stakeholders?

Stakeholder involvement in the IGA is a principle of Best Practice Regulation (Australian Government, n.d.). It was considered a key factor in the design of the Intergovernmental Agreement on Biosecurity (Craik, Palmer, & Sheldrake, 2017). The Review of the Intergovernmental Agreement for an Electronic Conveyancing National Law also cited extensive community and industry consultation as a strength of the IGA's development (Dench McClean Carlson, 2019).

This assessment criteria is also considered through the lens of accessibility. The literature review identified that 'access to IGAs is difficult, not least because their very existence sometimes is unknown' (Saunders, 2005, p. 299). Inaccessibility can impede research, and the performance of

partners and central executing agencies (in this case, the Commonwealth). There is no system for making agreements publicly accessible.

Inclusivity in the IGA

Does the IGA consider the inclusion of all Australians?

It is particularly relevant to consider issues of inclusion for all Australians in reflecting the governance structure afforded by an IGA.

The Intergovernmental Agreement on a National Water Initiative underscores the significance of water to Australia's First Nations' peoples. It recognises the importance of their 'needs in relation to water access and management' and seeks to support inclusion of Indigenous representation in water planning wherever possible. This principle could be translated more broadly to the WELS Scheme's purpose of water conservation (Australian Government, 2017).

Further, in 2011, COAG (as it was then known) endorsed the National Disability Strategy 2010–2020, a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. As part of the Strategy, COAG committed to use the review points of National Agreements – including, for example, the National Education Agreement, the National Agreement for Skills and Workforce Development, and other learnings and skills-related national partnerships – to consider the inclusion of strategies and performance indicators so as to ensure the needs of people with disability are addressed (Council on Federal Financial Relations, p. 9).

Regular reviews

Does the IGA provide for regular reviews to validate ongoing utility?

The Office of Best Practice Regulation includes the principle of ensuring that regulation remains relevant and effective over time. It notes that this can be achieved 'by incorporating sunset provisions or review requirements in legislative instruments' (Australian Government, n.d.). Regular reviews provide an opportunity to reflect on, and improve, regulation without waiting for a major failure to trigger an ad hoc review.

The scale outlined in Table 25: Assessment criteria for assessing IGA design, has been developed by incorporating the elements outlined above against the Regulator Performance Framework.

Table 25: Assessment criteria for assessing IGA design

Alignment	Requirement
Optimal	The IGA is critical to maintaining the success of the WELS Scheme. The IGA and structure implementing it continue to add value and its objectives remain appropriate. The scheme relies on the IGA being in place with all stakeholders actively involved.
Managed	The success of the WELS Scheme relies on the IGA being in place. There are minor issues or duplications in the IGA and the structure implementing it; its objectives remain appropriate. Most stakeholders are actively involved. There are plans for corrective actions.
Sound	The IGA is generally useful in maintaining the success of the WELS Scheme. There are issues or duplications in the IGA and the structure implementing it; its objectives require some adjustment but remain broadly appropriate. Most stakeholders are actively involved. Corrective actions not yet all identified or planned.
In transition	The IGA has limited relevance to the success of the WELS Scheme; its operation somewhat duplicates other structures and/or is not entirely relevant to stakeholders. The scheme could generally operate successfully without the IGA in place. There may also be changes required to the IGA objectives; some corrective actions have not yet been identified.
Not meeting expectations	The IGA and its operation duplicates other structures and/or is not relevant to stakeholders. The WELS Scheme could operate successfully without the IGA in place and the IGA may actually deter from best practice operation. Changes may be required to the IGA objectives; corrective actions may not yet be identified.

3.1.2 Findings relating to Design

The findings relating to the design Section of this Report are outlined below.

Constitutional source

For the purposes of the IGA Review, it has been assumed that the relevant authorising environment is in place. Pursuant to clause 3 of the IGA, it is not legally binding or enforceable on the Parties. The Parties agree pursuant to s. 3.1.2 to 'act and cooperate in good faith in accordance with the terms of the Agreement' (Australian Government, 2005, p. 3). The Parties also agree that the WELS Scheme 'should be administered on a cooperative basis' (Australian Government, 2005, p. 1). The IGA sets out that the Commonwealth law will provide for corresponding state and territory laws to confer functions or powers on both the WELS Regulator and inspectors appointed under the Commonwealth. State and territory Parties likewise commit to confer those powers and functions.

The IGA sets a commitment for jurisdictions to pass legislation to provide for a referral of powers and functions to the WELS Regulator. In doing so, it follows a well-established Australian

regulatory model intended to 'combine the authority of two or more jurisdictions to pursue a mutually agreed outcome'. For example, the regulation of the national energy market is governed under a similar federal agreement, called the Australian Energy Market Agreement. In the instance of WELS, the Parties agree to draw on the legislative power conferred by the respective Commonwealth, state and territory parliaments to create a single, consistent scheme across Australia (Saunders, 2005, p. 294).

Remains a required mechanism

The IGA contains 12 clauses, five relating to the actual scheme and seven to institutional provisions. As outlined at Table 3: Relevance of existing IGA clauses, in reviewing the IGA, it clearly reflects a time before legislation pertaining to the WELS Scheme. The IGA reflects its intended purpose of providing the clear political agreement needed to establish the WELS Scheme and sets out the key elements to be established. However, it is evident from stakeholder interviews that the IGA has limited relevance to the day-to-day implementation of the WELS Scheme. For example:

> *it is not something that I was consciously aware of. [It] sits in the background for engagement with the states and territories. It is not something that I work with every day. So, if we need to go and do some engagement, then we look to [the] IGA for the most effective way.*
>
> *I don't see aspects [of the IGA] that I think need to change.*

Stakeholders were generally satisfied with the content of the IGA, although it was noted that it places few obligations on state and territory participants. One interviewee suggested that the IGA would benefit from providing clearer expectations of these participants, for instance, on reporting obligations and compliance work.

The Review examined the IGA's ongoing relevance on a paragraph-by-paragraph basis, as set out in Table 26: Relevance of existing IGA clauses. Clause 4 (National Water Efficiency Labelling and Standards Legislation), for example, has been fulfilled, with each Party having passed legislation. This is, in effect, the primary reason for the establishment of the IGA. However, several clauses of the IGA continue to have ongoing relevance.

The IGA also contains some out-of-date references to government entities that have been reformed into different bodies, as set out in Table 27: Outdated IGA references. Of these, the most significant is that the IGA designates the Environment Protection and Heritage Council (EPHC) as the body to decide on the funds required for the WELS Scheme to operate. Government Parties will then contribute 20% of the funds on the basis of 50% Commonwealth funds and 50% from the states and territories on a pro rata population basis; 80% of the Scheme is funded through fees payable by industry. The EPHC will also resolve any disputes that cannot be resolved among the Parties.

Table 26: Relevance of existing IGA clauses

#	Clause name	Ongoing relevance?
1	Interpretation	Yes, but some errors (see Table 4)
2	Term of the agreement	Yes
3	Legal effect	Yes
4	National water efficiency labelling and standards legislation	No, fulfilled
5	Maintenance of consistent scheme	Yes. In need of action, as per Table 8: Comparison of Commonwealth, state and territory legislation
6	Establishment of WELS Advisory Committee	Yes, exists as WELSOG
7	Funding arrangements	Yes
8	Information	Yes, ongoing
9	Review	Yes
10	Variation	Yes, although never used
11	Withdrawal and termination	Yes
12	Dispute resolution	Yes, but needs to be updated

The EPHC was successively replaced by the Standing Council on Environment and Water in 2011 (Commonwealth of Australia, n.d.), and in 2013 by the Meeting of Environment Ministers (MEM) (Australian Government, n.d.). In 2020, COAG (including the MEM) was replaced with the National Cabinet (Commonwealth of Australia, n.d.). There is no structure that replaces the EPHC in the revised Australian Federal Relations Structure (Commonwealth of Australia, 2021), but options for its replacement include:

- Murray Darling Basin meeting: This considers water management issues, but with a focus on the Basin it does not relate to the entire country
- Environment Ministers meeting: Several water issues are covered by the environment element of the Federation Funding Framework, so there is a precedent (Australia), but water and environment are not always within the same portfolio across Australian governments
- Transport and Infrastructure meeting: If seen from a building and plumbing perspective, this meeting could be appropriate, but would not typically focus on water issues.

On balance, the reviewers consider the Environment Ministers meeting would be most suitable to replace the roles previously given to the EPHC, consistent with the Environment Federation Funding approach.

Table 27: Outdated IGA references

Clause	References (with outdated term in **bold**)	Comments	Significance
1.1.1	Commonwealth Act means the ***Water Efficiency Labelling and Standards Act 2004*** of the Commonwealth	The Commonwealth Act was passed in 2005 and is referred to as the *Water Efficiency Labelling and Standards Act 2005* (Water Efficiency Labelling and Standards Act 2005, n.d.).	Minor
1.1.1	Minister means the Australian Government **Minister for the Environment and Heritage**	This Commonwealth portfolio has been separated into a 'Minister for the Environment' and a 'Minister for Resources and Water'. The latter now has responsibility for the WELS Scheme (Parliament of Australia, 2020).	Minor
7.1.2	The Parties will provide any other funds that the **Environment Protection and Heritage Council** decides are required for the ongoing operation of the regulatory system under the Scheme from 1 July 2005, in accordance with the usual **Environment Protection and Heritage Council** formula, namely 50% Commonwealth funds and 50% from the States and Territories on a *pro rata* population basis.	The EPHC was successively replaced by the Standing Council on Environment and Water in 2011 (Commonwealth of Australia, n.d.), and in 2013 by the Meeting of Environment Ministers (Australian Government, n.d.). In 2020, COAG (including the MEM) was replaced with the National Cabinet (Commonwealth of Australia, n.d.). It is not immediately clear which entity within the National Cabinet structure has responsibility equivalent to the original EPHC.	Minor The formula for state and territory contributions is well established and unlikely to be revised.
12.2	Where the WELS Advisory Committee (now WELSOG) is unable to resolve the dispute in accordance with clause 12.1.1, the dispute will be referred to the **Environment Protection and Heritage Council** for resolution.		Potentially significant if disputes arise.

Involvement of non-government stakeholders

The IGA provides for involvement by state and territory representatives in clause 6 by outlining the establishment of a WELS Advisory Committee (now WELSOG), which will consist of one representative for each Party and be chaired by the Commonwealth representative.

It also provides that other stakeholders, 'such as representatives from industry, consumer and environmental groups', may be invited to attend and participate (Australian Government, 2013, p. 6). Document review of WELSOG minutes from 2015 indicates this option was seldom exercised over this period. Although there was one example of another stakeholder participating (a utilities representative), industry stakeholders were largely unaware of the IGA, and thus also likely to be unaware of the ability to participate by invitation in the WELSOG meetings.

The lack of stakeholder participation was raised as part of the 2010 Review of the WELS Scheme, and led to the Water Efficiency Labelling and Standards Advisory Group (WELSAG) being established as a forum for the WELS Regulator to meet with industry and consumers groups. The next review in 2015 noted that 'stakeholders provided mixed responses about the effectiveness of these engagement mechanisms in informing and improving the scheme's administration and operation' (Water Efficiency Labelling and Standards Regulator, 2015, p. 101). That review recommended that the administration and operation of WELSAG could be improved to enhance its effectiveness as a stakeholder engagement mechanism. The WELS Scheme Review considers WELSAG in greater detail as part of its section on efficiency.

WELSAG serves an important function in creating a dedicated mechanism to hear from industry and consumers. As it is not tied to WELSOG meetings, it is a more mature model than the one captured in the original IGA. The reviewers consider that the IGA text should be updated to embed this industry and consumer forum.

Stakeholder engagement would also be enabled by publishing the IGA online. As noted in the assessment criteria, 'access to IGAs is difficult, not least because their very existence sometimes is unknown' (Saunders, 2005, p. 299). Publishing the IGA is a simple action, but one that would enable transparency and public accountability for the intergovernmental arrangements.

However, there is no established system for making agreements publicly accessible, with no central repository of all intergovernmental agreements currently available. The closest example is on the COAG website, but this is likely to be transitioned to another website due to reforms in creating the National Cabinet. Publishing the IGA on the websites of the Department or WELS is another option. This Review recommends that the IGA be made publicly available alongside other agreements involving the Commonwealth and states and territories (Commonwealth of Australia, n.d.).

Inclusivity

The IGA makes no specific reference to issues of inclusion.

As part of the WELS Review, the online survey asked, 'How well does the WELS Scheme reach diverse communities such as remote communities, people who identify as having a disability and stakeholders for whom English is not their first language?'

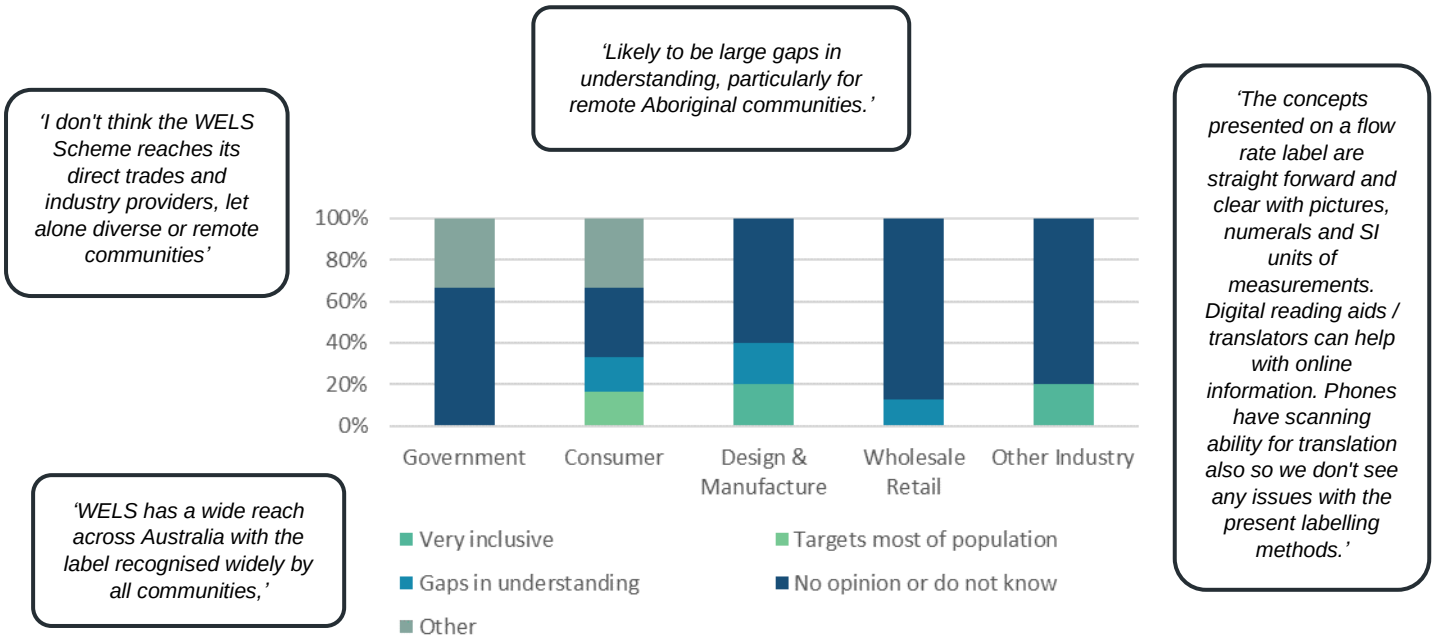
Across the three cohorts of industry, government and consumers, of the eight stakeholders who offered an opinion, three thought it was very inclusive (37.5%); one indicated that it targeted most of the population (12.5%); and four thought there were significant gaps (50%). Although this is a

small sample size, it does indicate a low level of confidence or uncertainty that the WELS Scheme reaches diverse audiences.

> *In dealing with remote indigenous communities their water requirements are different to that of other regions in Australia and these communities are not thought of in this scheme due to the lack of technical knowledge and inflexibility of the WELS Scheme. – Survey response*

Figure 48 below considers the survey responses from the WELS Review as to the success of the scheme in reaching diverse communities.

Figure 48: Success of the WELS Scheme in reaching diverse communities (Survey, n=33)



The advent of the National Disability Strategy 2010–2020 provided an important opportunity to consider 'the inclusion of strategies and performance indicators to ensure they address the needs of people with disability' (Council on Federal Financial Relations, p. 9).

Further, there is room to improve how the WELS Scheme relates to Aboriginal and Torres Strait Islander peoples. As the Department website notes:

> *Through their connection to and care for Country, Aboriginal and Torres Strait Islander people are vital partners in sustaining important environmental services. Partnering that involves Indigenous Australians offers unique opportunities to respectfully combine the strengths of traditional and other knowledge and practice, and to find avenues for achieving broader economic, health, social and cultural benefits (Australian Government, n.d.).*

This Review considers that this issue would benefit from leadership by the Parties to the IGA. WELSOG has an opportunity to provide oversight of, and input into, relevant planning and outputs – such as the communications strategy developed since the last Review – as to how the WELS Scheme can address inclusivity gaps.

We therefore recommend tasking WELSOG with considering appropriate ways, such as strategies and performance indicators, for the WELS Scheme to reach all Australians, accounting for the diversity of the population. Practical examples would include assessing whether the WELS Scheme communications plan – which WELSOG approves to the extent it is included in the Compliance and Enforcement Plan – considers these cohorts, and bringing examples of state and territory practice to the attention of the WELS Regulator.

Regular reviews

Clause 9 of the IGA provides that the agreement will be reviewed by the Parties concurrently with a review of the scheme at 'intervals of no more than 5 years'. The IGA Review should include public submissions and be conducted in association with the WELS Regulator, WELSOG, the Minister and other groups the Parties consider relevant. There is limited guidance on its direction, noting it will 'inter alia, address the consistency between the Acts in each jurisdiction, for example in relation to penalty levels'. (Australian Government, 2005, p. 9). Similar schemes combine the IGA review with the scheme review which is recommended ongoing for WELS given the overlap between the two areas.

The WELS Scheme has been reviewed in 2010 (Guest, 2010) and 2015 (Water Efficiency Labelling and Standards Regulator, 2015), and in 2020.

The Terms of Reference for the 2010 Review noted that:

> *States, Territories and the Australian Government will also be reviewing the WELS Intergovernmental Agreement (IGA). Accordingly, the review of the scheme is to also consider the operation of the IGA and, in the context of the scheme's review, provide any advice and recommendations thought appropriate regarding possible changes to the IGA* (Guest, 2010, p. 47).

The 2010 Review made no dedicated recommendations on the IGA itself but did suggest reforms to the WELS Advisory Committee.

Similarly, the Terms of Reference for the 2015 Review made no specific recommendations but did mention the IGA in reference to its consideration of the costs of the WELS Scheme. The reviewers understand that no concurrent review of the IGA took place by Parties in 2015.

The authors of this Review are not aware of any previous reviews of the IGA by state, territory or Australian governments. Thus, while the IGA promotes best practice in requiring periodic reviews, all of these have focused on the WELS Scheme not the IGA. This dedicated review of the IGA is, therefore, an important step in improving this element.

3.1.3 Assessment of Design

This rubric describes where the Review believe the IGA design is on the continuum developed. Recommendations align to and across these findings; they can be utilised to understand how recommendations were developed, however, 'Optimal' is not an implied target state as that will depend on department and stakeholder priorities and resourcing. The ability to reach 'Optimal' through adopting recommendations is not implied as there are complexities and influences which can also impact the status.

Table 28: Assessment of design

Criteria	Not meeting expectations	In transition	Sound	Managed	Optimal	Recommendations
Constitutional source				WELS		
Required mechanism	WELS					The IGA should be updated to correct outdated references
Non-government stakeholders			WELS			The IGA should be updated to embed WELSAG as a forum for industry and consumer engagement
Inclusivity		WELS				The IGA should be updated to include a

Criteria	Not meeting expectations	In transition	Sound	Managed	Optimal	Recommendations
						specific mandate for WELSOG to consider the issue of inclusivity The IGA should be updated to task WELSOG with considering appropriate ways for the WELS Scheme to reach all Australians
Regular reviews			WELS			The IGA reviews should occur every five years; which could be in combination with the WELS Scheme Review
Illustrative quote from stakeholder interviews						
The IGA is not something that I was consciously aware of. It sits in the background for our engagement with other Parties. It is not something that I work with every day. So, if we need to go and do some engagement, then we may look to IGA for the most effective way.						

Recommendations relating to design:

- **The IGA should be updated to correct outdated references.**
- **The IGA should be updated to embed WELSAG as a forum for industry and consumer engagement.**
- **The IGA should be updated to include a specific mandate for WELSOG to consider issues of inclusivity.**
- **The IGA should be updated to task WELSOG with considering appropriate ways for the WELS Scheme to reach all Australians.**
- **IGA reviews should occur every five years.**

3.2 Effectiveness of the IGA

3.2.1 Assessment criteria for reviewing the effectiveness of the IGA

This Review theme considers the extent to which the administration of the IGA is achieving its objectives.

According to the Office of Best Practice Regulation, effectiveness should be judged solely in terms of meeting the specified objective (Council of Australian Governments, 2007, p. 6). The elements for the effectiveness assessment criteria are, therefore, drawn directly from the IGA and are as follows.

Consistency across jurisdictions

Is the IGA implemented consistently between jurisdictions?

The key purpose of the IGA is for the Commonwealth, states and territories to ensure that all legislation forming part of the scheme remains nationally consistent. The IGA itself sets out that the terms of reference for its review will consider consistency, including in relation to penalty levels (Australian Government, 2005, p. 9).

Effective committee functions

Is the IGA Committee (now WELSOG) effective in delivering its functions?

The IGA includes a requirement for an Advisory Committee comprised of one representative from each Party and chaired by the Commonwealth representative. Its functions are:

- to oversee the implementation of the WELS Scheme
- to provide a forum for consultation between the Parties
- to provide advice to the responsible Commonwealth Minister on WELS products and standards; national strategies for compliance and enforcement; the coordination of each Party's resources; and water policy and related matters
- to develop an annual work plan, compliance and enforcement plan, and a budget.

The IGA is flexible about the frequency of meetings, which should be held 'approximately every 6 months or at such times as it see fit' (Australian Government, 2005, p. 6).

Timely information exchange

Is the IGA effective in exchanging information between the Parties?

Clause 8 of the IGA sets out the expectation that Parties will exchange information necessary for the effective and efficient operation and monitoring of the WELS Scheme.

The scale outlined in Table 6 has been developed by incorporating the elements outlined above against the Regulator Performance Framework.

Table 29: Assessment criteria for reviewing the effectiveness of the IGA

Maturity rating	Requirement
Optimal	From a key stakeholder perspective, the IGA is consistently implemented across jurisdictions and is complemented by state/territory initiatives, including at a local government level. WELSOG is an effective mechanism for managing the IGA and communications are clear and consistent. Risks are regularly reviewed at least annually, and mitigations put in place. WELSOG stakeholders see streamlined and consistent approaches across jurisdictions. Governments consider the IGA to represent better practice in facilitating federal cooperation in the delivery of cross-jurisdictional programs.
Managed	From a key stakeholder perspective, the IGA is mostly consistent in its implementation across jurisdictions and is complemented by state/territory initiatives, including at a local government level. WELSOG is an effective mechanism for managing the IGA and communications are clear and consistent. WELSOG stakeholders see streamlined and consistent approaches with only minor improvements identified, and modifications by the WELS Regulator mostly only in the planning stages. Risks are regularly reviewed, and mitigations put in place.
Sound	From a key stakeholder perspective, the IGA is broadly consistent in its implementation across jurisdictions and is partially complemented by state/territory initiatives, including at a local government level. WELSOG is a somewhat effective mechanism for managing the IGA and communications are generally clear and consistent. WELSOG stakeholders identify the need for improvement in a few areas, some of which are not yet planned by the WELS Regulator. Risks are reviewed and mitigations put in place but only every five years, as per the independent review timeline.
In transition	From a key stakeholder perspective, the implementation of the IGA across states and territories has significant variances in effectiveness. Some local initiatives are in conflict with the IGA objectives of state/territory initiatives, including at a local government level. WELSOG operations and communications can be significantly improved to contribute to a more effective operation, with stakeholders identifying multiple improvement opportunities. The IGA is thought to be less effective than similar IGAs nationally. Risks may not be reviewed regularly.
Not meeting expectations	From a key stakeholder perspective, the IGA cannot be readily described as effective. Most of its objectives are delivered outside of the IGA and WELSOG administration. There are significant areas of improvement identified and the IGA is seen as one of the least effective IGAs nationally. Risks may not be reviewed regularly.

3.2.2 Findings relating to Effectiveness

The findings relating to the Effectiveness Section of this Report are outlined below.

Consistency across jurisdictions

All jurisdictions have passed WELS Scheme legislation, albeit through different legal mechanisms, as set out in Table 7: State and territory approach to legislation.

Five Parties use the 'applied provisions' form of legislation. Under this model, a state or territory parliament passes a law that directly applies Commonwealth provisions within its own jurisdiction. The Party reserves the right to depart from the Commonwealth law, which can be recorded in a schedule. This approach ensures consistency across jurisdictions, without the need for future amendments, as it enables any amendments to the Commonwealth Act to apply automatically (unless the Party takes action to modify it).

Three Parties use a 'mirror' form of legislation. Under this model, the relevant parliament passes a law that largely replicates the Commonwealth legislation but differs as appropriate for a state law. To ensure national consistency, this model requires the state law to be amended if the Commonwealth law is amended, otherwise, there is the potential for divergences to emerge. This model is preferred by some parliaments as it gives them control over subsequent repeal and amendment.

Table 30: State and territory approach to legislation

'Applied provisions' legislation	'Mirror' legislation
ACT, NSW, NT, SA, TAS	QLD, VIC, WA

In general, the IGA has been effective in forming a consistent, national registration point for all products. While industry has identified issues to improve the registration process (as outlined in the WELS Review), fundamentally the IGA has successfully 'combined the authority of two or more jurisdictions to pursue a mutually agreed outcome' (Saunders, 2005, p. 294).

Similarly, the IGA has been effective in ensuring mutual recognition principles are given effect within Australia, and largely within New Zealand (Australian Government, 2005, p. 5). From this starting point, the WELS Scheme has now been used as a benchmark or model for an international water efficiency labelling program, which is set to be introduced by the International Standardization Organisation. On this basis, both the WELS Scheme and IGA have been effective beyond even their starting mandate.

This Review also examined the consistency of the legislation at a more granular level as set out in Table 8: Comparison of Commonwealth, state and territory legislation. The reviewers identified the following three inconsistencies.

a. Criminal or civil penalties

The Commonwealth Act imposes a penalty of six months imprisonment under ss. 51(3), 61(3), 62(3) and (4) (Australian Government, 2013). Three Parties to the IGA, namely the Australian Capital Territory (ACT), Queensland (QLD) and Western Australia (WA), have replaced the penalty of imprisonment with a fine. For the ACT and WA, this is 60 penalty units, while for QLD, it is 100 penalty units.

Certain jurisdictions appear to have changed their penalties to be lesser than those imposed at the Commonwealth level. In amending its legislation from 'mirror' to 'applied provisions' legislation in 2015, the then Attorney-General of the ACT noted:

> *I point out that the ACT bill differs from the current commonwealth law in one respect: the criminal penalty imposed for three offences... The ACT bill will retain, from the current legislation, a monetary penalty of 60 penalty units instead of the penalty of six months' imprisonment that applies in the Commonwealth legislation (Corbell, n.d.)*.

While this does create inconsistent penalties across jurisdictions, it is an intentional change by the three parliaments. Given the current extent of enforcement actions (only one enforcement action has progressed to prosecution), it is unlikely to be of practical significance.

b. Registration period

In contrast, there are some inconsistencies that appear accidental and are due to state legislation not being amended to remain consist with the *WELS Act 2005* (Cth). For instance, the 2015 amendment to the Commonwealth Act provides the WELS Scheme with discretion to set the registration period for WELS, currently set as one year. However, the laws of QLD, Victoria (VIC) and WA still set the registration period at five years. This has not been amended since the last review.

There are some other minor differences noted, which are also likely due to the 2015 amendments. For instance, the Commonwealth Act added a broader definition of 'supply' that has not been reflected in all state and territory Acts.

c. Penalty units

The reviewers examined the consistency of penalty units across jurisdictions. Most legislation uses the Commonwealth penalty unit value (either through 'applied provisions' or by directly referring to the Commonwealth definition). The exception is QLD, which uses its own penalty unit value and different numbers of penalty units accordingly. For instance, QLD imposes a fine of 100 QLD penalty units (at $133 per unit) for an equivalent CTH fine of 60 penalty units (at $222 per unit), a negligible difference at $13,300 versus $13,320.

Given this, the reviewers consider the penalty units are consistent across all Parties to the IGA.

Impact of inconsistency?

When considering the WELS Scheme as a whole, the three inconsistencies were identified across the various WELS legislation in the different jurisdictions. They are all relatively minor in that the WELS Scheme has still been able to operate with no discernible negative impact. However, while the reviewers consider that the difference in registration periods should be resolved, it is also understood that legislative reform is time consuming and there is typically significant competition on Parliaments' legislative agenda.

Thus, while the reviewers consider the registration periods should be made consistent in the interest of good regulatory practice, the relevant Parties to the IGA will be best placed to consider the most efficient way to do this.

Table 31: Comparison of Commonwealth, state and territory legislation

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Year	2005	2015	2005	2014	2005	2013	2013	2005	2006
Purpose		An Act to apply as a law of the Territory, a national law relating to water efficiency labelling and standards, and for other purposes	An Act to apply the *Water Efficiency Labelling and Standards Act 2005* of the Commonwealth as a law of this State; and for other purposes.	An Act to apply as a law of the Territory, a national law relating to water efficiency labelling and standards, and for related purposes		An Act to apply the *Water Efficiency Labelling and Standards Act 2005* of the Commonwealth as a law of this State; to repeal the *Water Efficiency Labelling and Standards Act 2006*; and for other purposes	An Act to apply the *Water Efficiency Labelling and Standards Act 2005* of the Commonwealth as a law of this State and for related purposes	The purpose of this Act is to provide for water efficiency labelling and for the making of water efficiency standards	An Act to provide for water efficiency labelling and for the making of water efficiency standards, and for related purposes
Model		'Applied provisions' legislation	'Applied provisions' legislation	'Applied provisions' legislation (previously 'mirror' legislation but changed to avoid need for future amendments)	'Mirror' legislation	'Applied provisions' legislation	'Applied provisions' legislation	'Mirror' legislation	'Mirror' legislation
Consistency		Automatic – 'applied provisions' includes amendments to the Cth Act	Automatic – 'applied provisions' includes amendments to the Cth Act	Automatic – 'applied provisions' includes amendments to the Cth Act	Must be amended by State legislature	Automatic – 'applied provisions' includes amendments to the Cth Act	Automatic – 'applied provisions' includes amendments to the Cth Act	Must be amended by State legislature	Must be amended by State legislature
Functions and powers		The Commonwealth Regulator and other authorities and officers referred to in the 'applied provisions' have the same functions under the 'applied provisions' as they	The Commonwealth Regulator and other authorities and officers referred to in the 'applied provisions' have the same functions and powers under the 'applied provisions'	The Commonwealth Regulator and other authorities and officers referred to in the 'applied provisions' have the same functions and powers under the 'applied provisions'	Functions are conferred within the Act itself	The Commonwealth Regulator and other authorities and officers referred to in the 'applied provisions' have the same functions and powers under the 'applied provisions'	The Commonwealth Regulator and other authorities and officers referred to in the 'applied provisions' have the same functions and powers under the 'applied provisions'	Functions are conferred within the Act itself	Functions are conferred within the Act itself

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
		have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth	as they have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth	as they have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth		as they have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth	as they have under the Commonwealth water efficiency laws, as those laws apply to the Commonwealth		
Offences	Under s. 51: A person commits an offence if: (a) the person is required to answer a question or produce a book, record or document under paragraph (2)(b); and (b) the person does not answer the question or produce the book, record or document Penalty: 6 months imprisonment	**ACT has substituted a fine of 60 penalty units in place of the Cth penalty of 6 months imprisonment** The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the applied provisions as if those provisions were a law of the Commonwealth and not a law of the Territory	Cth criminal laws apply as laws of South Australia in this context	The relevant Commonwealth laws apply as laws of the Territory in relation to an offence against the 'applied provisions' as if those provisions were a law of the Commonwealth and not a law of the Territory	Queensland has substituted a fine of 100 QLD penalty units instead of 6 months imprisonment	Cth criminal laws apply as laws of South Australia in this context.	Cth criminal laws apply as laws of Tasmania in this context	**Under s. 51, the penalty is a fine of 60 penalty units** In addition: 39B False or misleading information or document Penalty: Imprisonment for 1 year or 60 penalty units This section does not appear in the Commonwealth Act but provisions to the same effect (except as to penalty) are included in Part 7.4 of the Criminal Code of the Commonwealth	**Under s. 51, the penalty is a fine of 60 penalty units**
Penalty units		Refer to Cth Act	Refer to Cth Act	Refer to Cth Act	Penalties are expressed in QLD penalty units. The number is therefore different (i.e. 100 penalty units rather than 60 in the Cth Act)	Refer to Cth Act	Refer to Cth Act	Penalty unit has the same meaning as in the Commonwealth Act	A penalty unit is the amount (in dollars) outlined under section 4AA of the *Crimes Act 1914* of the Commonwealth

	CTH	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Period of registration	Section 26 allows for the scheme to set the period of registration				Section 30(1) sets the period of **registration as 5 years**			Section 30(1) sets the period of **registration as 5 years**	Section 30(1) sets the period of **registration as 5 years**
Modifications from Cth law?		Imprisonment removed	None found			None found	None found		Section 7A on meaning of 'supply' in Cth is not included here

Effective committee functions

The IGA provides that the WELS Advisory Committee (now WELSOG) oversees the implementation of the WELS Scheme, and annually produces a budget, and a work plan, including a compliance and enforcement plan. In practice, these tasks are carried out by the WELS Regulator. This Review found that annual budgets and a longer term compliance plan, which outlined a risk-based approach and contained a transparent escalation tree, had been developed since 2015.

There was, however, no evidence of annual work plans as these are currently being managed through multi-year strategic plans, such as the Water Efficiency Labelling and Standards Scheme Strategic Plan 2016–19. Some WELSOG members considered it would be valuable for the WELS Regulator to produce an annual operating plan that covered planned enforcement activities in each jurisdiction (perhaps staggered across years as resources permit). This could also help in setting some agreed priorities and deadlines with state and territory governments on issues where specific cooperation is needed (see the Section on Effectiveness).

Previous Review findings

The 2010 WELS Review noted that the then Advisory Committee has not had an active role in 'overseeing the implementation of the scheme', and that a Ministerial Council is not an appropriate mechanism to provide oversight for a 'relatively small scheme like WELS'. It suggested that a 'more effective governance arrangement is required', and made a range of recommendations. These included that the Advisory Committee develops and agrees to a three-year strategic plan and budget for approval by the Ministerial Council, with the provision of annual reports and the renaming of WELSAC to WELS Officials Group (Guest, 2010, p. 16).

The joint government response accepted this recommendation and WELSAC was subsequently renamed WELSOG. The 2015 Review noted that while most members consulted were generally content with their level of involvement in the scheme, and that the Officials Group appeared to operate effectively in approving changes in a timely manner, there were 'mixed opinions about its value and the level of engagement by some members'. It found that:

> *…WELSOG members had widely divergent levels of knowledge of, and engagement with, the WELS Scheme. ... The Reviewer is concerned that some members have become disengaged with the process and this could have adverse impacts on the effectiveness of the WELS Scheme. (Water Efficiency Labelling and Standards Regulator, 2015, p. 103).*

The 2015 Review also found that 'WELSOG appears to generally operate effectively and there are relatively minor opportunities to improve knowledge (or awareness) and engagement'. (Water Efficiency Labelling and Standards Regulator, 2015) It recommended that:

> *stakeholder engagement processes for the WELS Scheme should be modified, including to: ... improve the management of the Water Efficiency Labelling and Standards Officials Group (WELSOG) – including ensuring meetings are held at appropriate frequency, more effective communication with and between WELSOG members, and reporting to Ministerial Council is consistent and timely (Water Efficiency Labelling and Standards Regulator, 2015).*

Post-2015 period

Table 32: WELSOG meetings

Year	WELSOG Meetings
2020	2
2019	1
2018	1
2017	1
2016	2
2015	1

WELSOG has met annually since the last review, with an additional meeting in 2016 likely driven by the need to finalise the joint government response to the 2015 Review.

The incentives for most WELSOG representatives are for it to run smoothly, but there were mixed views on its effectiveness. Some were generally satisfied with the meetings, noting that state and territory representation functioned more as high-level oversight than a detailed involvement in the implementation of the WELS Scheme.

> *WELSOG is more of a Steering Committee-type role. You don't work on the day-to-day details and don't need to be on top of things on a day-to-day basis. There is a risk of things being disjointed through the infrequency of meetings, but it is something that can be worked with. ... I don't see that the model should be changed; it is working fine from where I am sitting.* [Stakeholder interview]

Others considered that the WELSOG agenda relied solely on direction from the Commonwealth and the WELS Regulator. Particularly for states or territories with limited industry, there appeared to be a disconnect between the Officials' view of the success of the WELS Scheme and the view of those who regularly engage with it. This may be because industry stakeholders were more likely to engage directly with the WELS Regulator than their state or territory representative, which meant that some WELSOG representatives were unaware of industry concerns in their jurisdiction.

There was a desire in some quarters for WELSOG representatives to function more like a focal point for the state or territory, as this would strengthen the ability of the WELS Scheme to address issues related to the interaction of other schemes and regulations. Some considered that a revised IGA would be a good place to codify more responsibility on states and territories to make the WELS Scheme more effective.

Examining the WELSOG minutes from 2015, some agenda items, particularly recommendations from the 2015 Review, have progressed very slowly, if at all. In the 2020 minutes, a range of issues are noted as 'ongoing' including for instance (Water Efficiency Labelling and Standards Regulator, 2020):

- as early as the 2015 minutes, representatives raised the issue that state plumbing officers are unable to share compliance information with WELS compliance officers
- in 2018, WELSOG discussed that the WA Plumbing Regulations do not allow the sharing of information to other Regulators. The action taken was for the WELS Regulator was to consider mechanisms for information sharing between WA Regulators and the WELS Scheme
- similarly, WELSOG discussed whether plumbing inspectors could conduct more inspections for the WELS Scheme, and that the WELS Regulator should investigate a way to authorise these inspections, particularly in NSW.

In response, the WELS Regulator implemented some practical interim solutions. In 2019, for instance, it offered for jurisdictional plumbing inspectors to observe inspections coordinated by WELS inspectors, with the builder or developer able to grant or refuse consent (Water Efficiency Labelling and Standards Regulator, 2019).

However, the reviewers consider that these issues are, in practice, challenging for the WELS Regulator to resolve on its own, as the issue goes directly to the interplay of Commonwealth, state and territory jurisdictions. As such, it is exactly the kind of inter-jurisdictional challenge that WELSOG should be well placed to address and to assist the WELS Regulator in progressing. This contrasts with several other areas that the WELS Regulator has successfully addressed, and which sit within its own mandate to resolve, such as the new Communications Strategy and the WELS Compliance and Enforcement Strategy and Policy to guide enforcement actions.

The reviewers consider that WELSOG would be more effective in progressing such issues with the greater involvement of other agencies. For instance, it would help the WELS Regulator if plumbing Regulators were directly involved in WELSOG. This may not need to be a permanent change; a temporary arrangement like a WELS plumbing working group might provide enough support to the WELS Regulator to progress some of these issues.

The reviewers recommend that the WELSOG considers involving additional Regulators, such as for the plumbing industry, to advance reforms of the WELS Scheme.

In October 2020, a Review of COAG Councils and Ministerial Forums was undertaken by Peter Conran, AM for the National Cabinet (the Conran Review). Of relevance, the Conran Review criticised agendas that were rolled over without resolution over several years. It recommended that 'all items should have defined timeframes for when they should be resolved, no longer than 12 months' (Conran AM, 2020, p. 7).

This specific timeframe may not fit WELSOG and the WELS Scheme. However, the principle of setting specific timelines to achieve objectives is still relevant. It may also be a helpful tool to galvanise action from state and territories, where necessary, to support the WELS Regulator.

The reviewers recommend that WELSOG has a stronger focus on delivering improvements within specific timeframes.

Effectiveness of information exchange

A document review of the WELSOG minutes indicates there is active information sharing between representatives both in the meetings and by informal contact outside of them. This has helped representatives to identify opportunities for cooperation: for example, the WELS Regulator participating in roadshows with plumbers, Master Builders Associations and the Sydney Build Expo, and the survey on awareness of the WELS Scheme by the Western Australia building industry.

Stakeholder feedback from IGA members was very positive on the effectiveness of information exchange. It was noted that the WELSOG meetings helped to create a sense of cooperation across the whole country, not just individual parties dealing bilaterally with the Commonwealth. Representatives appreciated the opportunity to hear about developments and challenges in other states and territories, noting it was the only opportunity they had to do so.

WELSOG also provided benefit to the Regulator, by enabling it to hear about the challenges and the opportunities the WELS Scheme presented in states and territories. As most WELSOG

representatives manage a range of water issues far broader than the WELS Scheme, they are able to contribute a broader perspective that makes WELSOG discussions mutually beneficial. However, as this exchange is typically ad hoc, the reviewers recommend that, as part of an updated IGA, WELSOG representatives be given greater responsibility to report on initiatives for water efficiency in their states and territories that interact with and depend on the WELS Scheme and where national consumer and industry messaging aligns.

> *It's a very useful group. We get something useful every time that we meet.*
> [Government Stakeholder]

Overall, the reviewers consider that WELSOG appears to be generally effective in facilitating information exchange between the Parties to the IGA, and there are only relatively minor opportunities to improve this.

3.2.3 Assessment of Effectiveness

This rubric describes where the Review believe the IGA effectiveness is on the continuum developed. Recommendations align to and across these findings; they can be utilised to understand how recommendations were developed however 'Optimal' is not an implied target state as that will depend on department and stakeholder priorities and resourcing. The ability to reach 'Optimal' through adopting recommendations is not implied as there are complexities and influences which can also impact the status.

Table 33: Assessment of Effectiveness

Criteria	Not meeting expectations	In transition	Sound	Managed	Optimal	Recommendations
Consistency across jurisdictions			WELS			The Parties should consider whether current legislative inconsistencies justify amending relevant laws and if so, the best way to do this
Effective Committee functions			WELS			The reviewers recommend that WELSOG has a stronger focus on delivering improvement as within a specific timeframe and incorporates workplan review with budget and compliance and enforcement strategy as identified in IGA
Information exchange				WELS		The reviewers recommend the WELSOG considers involving additional Regulators, such as for the plumbing industry, to advance reforms on the WELS Scheme The WELS Regulator should prepare annual operating plans to assist with planning
Stakeholder interview inputs, quotes						
It's a good way to hear from other states and their experiences of implementing WELS in their area. ... You don't feel like an isolated pocket that is dealing directly with the Commonwealth bilaterally. It's the coming together of ideas and views. [Government Stakeholder]						

Recommendations relating to Effectiveness:

- **The Parties should consider whether current legislative inconsistencies justify amending relevant laws and if so, the best way to do this.**
- **The WELS Regulator should prepare annual operating plans to assist with planning.**
- **The reviewers recommend the WELSOG considers involving additional Regulators, such as for the plumbing industry, to advance reforms of the WELS Scheme.**
- **The reviewers recommend that WELSOG has a stronger focus on delivering improvements within specific timeframes.**

3.3 Efficiency of the IGA

3.3.1 Assessment criteria for review the efficiency of the IGA

The Review theme of Efficiency considers the extent to which the administration of the IGA, including WELSOG, is implemented efficiently. Measurements of efficiency are best facilitated when performance measures, such as benchmarks and/or milestones, are specifically provided for in the agreement as this allows 'value for money' assessments (Council on Federal Financial Relations, p. 6). The IGA does not have clear performance benchmarks, so this Review has focused on assessing minimal duplication, fit-for-purpose process, and the adequacy and appropriateness of funding as identified in the Terms of Reference.

The elements for the assessment criteria relating to the efficiency of the IGA are:

Fit-for-purpose processes

Are the WELSOG processes fit for purpose? Does WELSOG run efficiently with clear, regular, and timely communication that is appreciated by stakeholders?

Adequate and appropriate funding

Is the funding for the WELS Scheme adequate and appropriate?

Clause 7 of the IGA provides some direction on funding arrangements. It notes that the Commonwealth legislation is to provide for 'possible cost recovery through the charging of application and licence fees, to the extent consistent with Commonwealth policy on cost recovery' (Australian Government, 2005, p. 7).

The scale outlined in Table 34 has been developed by incorporating the elements outlined above against the Regulator Performance Framework.

Table 34: Assessment criteria for assessing the efficiency of the IGA

Alignment	Requirement
Optimal	The IGA is useful and valid in its current form, with no duplication across its operation and that of the Act or legislation in states/territories or in similar schemes. The IGA implementation funding is almost fully utilised (+/-10% of funds received are not spent) to deliver its operation with minimal duplication of activities. All stakeholders identify the IGA operation as being efficient and good value for money with no further opportunities to improve efficiency. Fit-for-purpose communications are in place between members of the IGA.
Managed	The IGA is mostly useful and valid in its current form with minor, if any, duplication across its operation and that of the Act or legislation in states/territories or in similar schemes. The IGA implementation funding is mostly utilised to deliver its operation with some under- or over-spend (+/-15% of funds received are not spent), and only minor duplication of activities. Most stakeholders identify the IGA operation as being efficient and value for money with only minor further opportunities to improve efficiency. Fit-for purpose communications are in place between IGA members although some minor areas of improvement may have been identified.
Sound	The IGA is useful and valid in its current form, with no duplication across its operation and that of the Act or legislation in states/territories or in similar schemes. The IGA implementation funding is within +/-20% utilised to deliver its operation with some duplication of activities. Some stakeholders identify the IGA operation as being efficient and value for money with a number raising practical opportunities to improve efficiency. Fit-for-purpose communications are mostly in place between IGA members.
In transition	The funding is more than 20% over- or under-spent with significant areas of duplication across jurisdictions and other schemes, with multiple major improvements identified, including in communications between stakeholders.
Not meeting expectations	The IGA and its operation duplicates other structures in many areas and may be significantly over- or under-spent. It offers little to no incremental value to stakeholders.

3.3.2 Findings relating to Efficiency

The findings relating to the Efficiency Section of this Report are outlined below.

Fit-for-purpose processes

State and territory stakeholders are generally satisfied with the administration of WELSOG. The meetings are considered an efficient way to update jurisdictions on relevant developments.

Committee functions generally occur within IGA timeframes, with minutes generally circulated efficiently (although at least one set of minutes was delayed for six months). In the period observed, there has been a shift to papers being prepared and circulated ahead of meetings, which has improved meeting efficiency.

While it was acknowledged that face-to-face meetings have some benefit, most stakeholders considered that online meetings were more efficient and wanted them to continue.

> *For some [representatives], the best part of the day and a half or two days is in travelling. Clearly there can be benefits from face-to-face meetings such as getting an understanding of people who you're meeting with. But the travel, time and money parts makes it less great. – Government stakeholder*

The WELS Regulator also noted that it tries to host WELSAG meetings prior to WELSOG meetings in order to strengthen industry feedback to the Committee. The reviewers considered this a useful sequencing worth continuing where possible.

Adequate and appropriate funding

Funding is derived from two sources:

- Commonwealth, state and territory contributions
- industry cost recovery.

The IGA provides for contributions on the basis of 50% Commonwealth funds and 50% from the states and territories on a pro rata population basis. This practice of allocating funding on a per capita basis is well established. It is used in the GEMS IGA (Energy Rating, n.d.), in the IGA on Nationally Consistent Worker Screening for the National Disability Insurance Scheme (Council of Australian Governments, 2018, p. 21), and to calculate funds provided from the Commonwealth to states and territories (Commonwealth of Australia, 2020).

There are alternative models. The IGA establishing the Australia Building Codes Board, which manages WaterMark, determines funding with a combination of a base component of $75,000 per annum and a pro rata amount based on the total value of building approvals in each jurisdiction (2020, p. 29), while the IGA on Commercial Vessel Safety Reform sets out specific percentages for each jurisdiction. These alternative models could be considered by the WELS IGA to manage forecast revenue against expenses.

WELSOG representatives were comfortable with the status quo and indicated it would be difficult to justify to their Ministers any change in this approach.

The current Commonwealth policy on cost recovery is set out on the website of the Department of Finance (Australian Government, n.d.). Of relevance:

> *Australian Government entities should generally set charges to recover the full cost of providing specific activities. Partial cost recovery, which occurs when less than the full cost of a government activity is recovered, may be*

appropriate in some circumstances where... the Australian Government has made an explicit policy decision to charge for part of the costs of an activity.

For each cost-recovered activity, the responsible government entity must:

- gain policy approval from the Australian Government to cost recover
- have statutory authority to charge
- ensure alignment between expenses and revenue
- maintain up-to-date, publicly available documentation and reporting.

The IGA is silent on the level of industry cost recovery. However, it does require the Commonwealth legislation to provide for 'possible cost recovery through the charging of application and licence fees, to the extent consistent with Commonwealth policy on cost recovery' (Australian Government, 2005, p. 7).

The statutory authority to charge is provided for by the *Water Efficiency Labelling and Standards (Registration Fees) Act 2013*. This empowers the Commonwealth Minister to set registration fees to recover 80% of the WELS Scheme's total expenses. Previously the fees were in the form of a fee for service authorised by the *Water Efficiency Labelling and Standards Act 2005*.

Table 35: WELS annual fee

Year	Fee revenue
2012/2013	$0.07m
2013/2014	$1.26m
2014/2015	$1.34m
2015/2016	$1.33m
2016/2017	$1.53m
2017/2018	$1.57m
2018/2019	$1.61m
2019/2020	$1.64m

The administration of the WELS Scheme is funded through an agreed revenue budget based on projected costs and projected industry fee revenue (Department of Agriculture, Water and the Environment 2020a). Up-to-date, publicly available information on its fee structure is available on the WELS website (Water Efficiency Labelling and Standards Scheme, 2017).

The WELS Special Account balance suggests there is currently a misalignment between expenses and revenue, with the balance in excess of AU$5 million at the end of the 2019–2020 financial year.

According to WELSOG minutes, industry fee revenues in 2016–17, 2017–18 and 2018–19 have consistently been approximately 9% above those predicted in the WELS Strategic Plan 2016–19 (Water Efficiency Labelling and Standards Scheme Regulator, 2019). However, this does not account for all of the existing balance, with some additional funds given to WELS by Parties to adjust for the five-year to one-year application fee structure. In addition, some funds will be

needed for projects to overhaul the ICT system, to fund legal proceedings and to improve some compliance activities, all of which will affect the current budget surplus. This justifies some of the over-recovery or underspend.

It is important, however, that the WELS Scheme has in place a mechanism to manage systematic over-recovery. The *Australian Government cost recovery guidelines* note that:

> *ideally, the expenses and revenue should be aligned on a yearly basis. However, where justified, they can be aligned over a longer period (e.g., the business cycle of the activity). Government entities should develop mechanisms (e.g., internal control systems) to manage any under- or over-recovery. There must not be systematic over- or under-recovery of costs' (Australian Government, n.d.).*

This Review, therefore, recommends that the WELS Scheme actively manage forecast revenue against expenses which may result in consideration of registration fee amounts and structure.

3.3.3 Assessment of Efficiency

This rubric describes where the Review has assessed the IGA efficiency is on the continuum developed for the purposes of this Review. Recommendations align to and across these findings; however Optimal is not an implied target state as an assessment of 'Optimal' will depend on department and stakeholder priorities and resourcing. The ability to reach 'Optimal' through adopting recommendations is not implied as there are complexities and influences which can also impact the assessment.

Table 36: Assessment of efficiency

Criteria	Not meeting expectations	In transition	Sound	Managed	Optimal	Recommendations
Fit-for-purpose processes				WELS		Prepare annual operating plans through WELSOG. Update the IGA to embed WELSAG as a forum for industry and consumer engagement, and to include a specific mandate for WELSOG to consider issues of inclusivity. Continue to hold WELSOG meetings virtually and, where possible, sequencing these to be held after WELSAG meetings or forums. Update the IGA text to ensure that its references are still correct and aligned with current intergovernmental architecture. Publish updated IGA publicly online. The IGA reviews should occur every five years; which could be in combination with the WELS Scheme Review.
Adequate and appropriate funding		WELS				Actively manage forecast revenue against expenses which may result in consideration of registration fee amounts and structure.
Stakeholder interview inputs, quotes						
I think the secretariat and the meetings are well organised in terms of the materials provided. [Government Stakeholder]						

Recommendations relating to Efficiency:

- **The reviewers recommend continuing to hold WELSOG meetings virtually and, where possible, sequencing them to be held after WELSAG meetings or forums.**
- **The reviewers recommend that the WELS Scheme reconsiders its registration fee structure to ensure better alignment between expenses and revenue.**
- **Publish the existing IGA and any updates online.**

4 CONCLUSIONS

This Review has identified a range of recommendations for the IGA across the three themes of Design, Effectiveness and Efficiency.

These recommendations have different resource implications for the Parties to the IGA and for the WELS Regulator. WELSOG representatives from the states and territories typically cover a broad range of water-related issues, of which the WELS Scheme forms a small but important part. The WELS Regulator itself is a small organisation focused on implementing the WELS Scheme, which introduces limitations for all Parties.

With this in mind, the recommendations can be packaged into four main options including: terminating the IGA; maintaining the status quo; undertaking a technical refresh of the IGA or modernising the IGA to reflect current best practice. Some of the recommendations are also cross-cutting or interrelated with the WELS Review, such as legislative consistency and reconsidering the fee structure.

The first option is for the Parties to terminate the IGA. Despite the IGA not having been reviewed or amended since its inception, the WELS Scheme has been able to function effectively without reference to it. With the establishment activities having largely been concluded, the primary ongoing relevance of the IGA is as evidence of the political agreement between governments to funding the scheme (and on what basis) and as the rationale for the regular meetings of WELSOG. Nonetheless, these meetings are valued by its members as the primary mechanism for engaging with the WELS Scheme.

An alternative to terminating the IGA could be to maintain the current status quo. This would mean that the IGA would be left as is, primarily as a historical instrument but one that continues to promote cooperative federalism. This would also allow for ongoing WELSOG meetings and the existing funding arrangement between the Commonwealth and states and territories. If the status quo were to be maintained, publication of the IGA online would provide greater transparency of process.

A third option for the Parties is to undertake a technical refresh of the IGA. Under this option, the IGA would be retained and updated to ensure that its references are still correct and aligned with current intergovernmental architecture. If a technical refresh were undertaken, there would be benefit in continuing to hold WELSOG meetings virtually and, where possible, sequencing them to be held after WELSAG meetings or forums. The IGA would also benefit from another review in five years, and the WELS Regulator should prepare annual operating plans to assist with planning. Further consideration by the Parties as to the cost versus the benefit of simply undertaking a technical refresh of the IGA is required.

A final option, which is the option that the reviewers recommend, is that the IGA is technically refreshed and modernised to reflect contemporary best practice and to reflect the updated context within which it is currently operating. The following recommendation seeks to support the IGA to remain fit for purpose, relevant and reflective of the maturity of the WELS Scheme.

The reviewers recommend the IGA is updated to provide WELSOG with stronger participation in the implementation of the WELS Scheme, and the ability to consider involving additional Regulators, such as for the plumbing industry, to advance reforms of the scheme. The WELS Regulator should prepare annual operating plans to assist with planning. The IGA should also be updated to embed WELSAG as a forum for industry and consumer engagement, and to include a specific mandate for WELSOG to consider issues of inclusivity. The reviewers

recommend continuing to hold WELSOG meetings virtually and, where possible, sequencing these to be held after WELSAG meetings or forums.

The IGA text should also be updated to ensure that its references are still correct and aligned with current intergovernmental architecture. We recommend the original and updated IGA be published publicly online, and that another review of the IGA should occur in five years.

The recommendations seek to promote consistency in the implementation of the WELS Scheme across Australia and strengthen its connection to key government stakeholders. The recommendations also seek to assist the WELS Regulator to implement changes that require cooperation from other state and territory agencies and, by doing so, enable the WELS Scheme to continue to mature. There are challenges and impediments that would need to be addressed which may affect the cost effectiveness or ability to implement any improvements.

4.1 Recommendations

Recommendation 1: Update the IGA in order to support the WELS IGA to remain relevant by:

- correcting outdated references
- embedding WELSAG as a forum for industry and consumer engagement
- including a specific mandate for WELSOG to consider the issue of inclusivity
- tasking WELSOG with considering appropriate ways for the WELS Scheme to reach all Australians.

Recommendation 2: Drive five-yearly reviews of the IGA

Recommendation 3: Implement improvements that will support the administration of the IGA including:

- considering whether current legislative inconsistencies justify amending relevant laws and if so, the best way to do this
- preparing annual operating plans to assist with planning
- considering involving additional Regulators, such as for the plumbing industry, to advance reforms of the WELS Scheme
- adding a stronger focus on delivering improvements within specific timeframes within WELSOG.

Recommendation 4: Implement improvements that will strengthen the efficiency of the administration of the IGA and WELSOG including:

- continuing to hold WELSOG meetings virtually and, where possible, sequencing them to be held after WELSAG meetings or forums
- reconsidering the WELS Scheme registration fee structure to ensure better alignment between expenses and revenue
- publishing the existing IGA and any updates online.

APPENDICES

Appendix 1: Water Efficiency Labelling and Standards Agreement

APPENDIX 1: WATER EFFICIENCY LABELLING AND STANDARDS AGREEMENT

WATER EFFICIENCY LABELLING AND STANDARDS AGREEMENT

AGREEMENT in relation to Water Efficiency Labelling and Standards between

The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and

The STATE OF NEW SOUTH WALES;

The STATE OF VICTORIA;

The STATE OF WESTERN AUSTRALIA;

The STATE OF QUEENSLAND;

The STATE OF SOUTH AUSTRALIA;

The STATE OF TASMANIA;

The NORTHERN TERRITORY OF AUSTRALIA;

The AUSTRALIAN CAPITAL TERRITORY

(collectively called 'the States and Territories').

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DATE

This AGREEMENT is dated 18 March 2005.

PARTIES

This AGREEMENT is made between the following parties:

1. **The COMMONWEALTH OF AUSTRALIA ('the Commonwealth') and**

2. **The STATE OF NEW SOUTH WALES;**
3. **The STATE OF VICTORIA;**
4. **The STATE OF WESTERN AUSTRALIA;**
5. **The STATE OF QUEENSLAND;**
6. **The STATE OF SOUTH AUSTRALIA;**
7. **The STATE OF TASMANIA;**
8. **The NORTHERN TERRITORY OF AUSTRALIA; and**
9. **The AUSTRALIAN CAPITAL TERRITORY**

(collectively called 'the States and Territories').

CONTEXT

This Agreement is made in the following context:

A Recognising the need to identify new means of conserving water, the Parties have agreed that legislation should be introduced for water efficiency labelling and standards, including minimum standards.

B The Commonwealth and the States and Territories agree that the legislative scheme should be nationally consistent, drawing on legislative power conferred by the Commonwealth, State and Territory Parliaments.

C In the interests of implementing an efficient and effective regulatory system for mandatory water efficiency labelling and standards, including minimum standards, the Commonwealth and the States and Territories have agreed

that the national legislative scheme should be administered on a cooperative basis.

1 INTERPRETATION

1.1 Defined terms

1.1.1 In this Agreement, unless the contrary intention appears:

Agreement	means this document and includes any schedules and annexures;
Commonwealth Act	means the *Water Efficiency Labelling and Standards Act 2004* of the Commonwealth;
Legislation	includes regulations and other subordinate instruments;
Minister	means the Australian Government Minister for the Environment and Heritage;
Party	means a party to this Agreement;
Regulator	Means the Secretary of the Department of State of the Commonwealth that deals with the matters to which the Commonwealth Act relates; *[Note – as defined in Section 21 of the Commonwealth Act (by reference to Section 7).]*
Scheme	means the totality of the legislation enacted by the Parties in relation to mandatory water efficiency labelling and standards, including minimum standards, in accordance with this Agreement;
State	does not include the Australian Capital Territory or the Northern Territory of Australia;
Territory	refers to the Australian Capital Territory and the Northern Territory of Australia but does not include external Territories.

1.2 Interpretation

1.2.1 Expressions used in this Agreement have the same meaning as in the Commonwealth Act.

2 TERM OF AGREEMENT

2.1 Commencement date

2.1.1 This Agreement commences upon execution by the Commonwealth and two other Parties, including at least one State, and continues until it is terminated in accordance with clause 11.2.

3 LEGAL EFFECT OF AGREEMENT

3.1 Agreement not legally binding

3.1.1 This Agreement is not intended to be, and is not, a legally binding or enforceable document.

3.1.2 Notwithstanding clause 3.1.1, the Parties will act and cooperate in good faith in accordance with the terms of this Agreement.

4 NATIONAL WATER EFFICIENCY LABELLING AND STANDARDS LEGISLATION

4.1 Commonwealth Act

4.1.1 The Commonwealth will use its best endeavours to ensure that the Commonwealth Act will, amongst other things:

a. provide for the appointment of a Water Efficiency Labelling and Standards Regulator (the Regulator) with functions including overseeing the administration of the Scheme, ensuring compliance and enforcement, and providing information and advice to the Minister, to State and Territory Ministers and to the public;

b. prohibit the sale of prescribed water-use and water-saving products (WELS products) unless the products are registered in accordance with the relevant WELS standard and comply with the water efficiency labelling, minimum water efficiency and general performance requirements of the relevant WELS standard;

c. provide that the WELS products and any water efficiency standards will be determined by the Minister, subject to agreement to the terms of each determination from a majority of the participating States and Territories;

d. not preclude the operation of any State or Territory law that is capable of operating concurrently with the Commonwealth Act;

e. provide for an adequate compliance and enforcement regime; and

f. provide for corresponding State-Territory laws to confer functions or powers, or impose duties, on the Regulator and inspectors appointed under the Commonwealth Act, to the extent permitted constitutionally and in accordance with agreements between the Commonwealth and the relevant States or Territories.

4.2 State and Territory legislation

4.2.1 Each State or Territory government will submit to its Parliament as soon as possible a Bill or Bills to form part of the Scheme in order to ensure that the Scheme applies consistently to all persons, things and activities within Australia. Each State and Territory government will use its best endeavours to secure the passage of the Bill or Bills submitted to its Parliament, as introduced, and commencement of the Act(s) by June 2005.

4.2.2 The Bill or Bills referred to in clause 4.2.1 will, amongst other things:

a. confer functions and powers on the Regulator in the same terms as those specified in the Commonwealth Act;

b. provide for the Regulator to delegate powers and functions under the Commonwealth Act to officers and employees of agencies of the relevant State or Territory, with the prior agreement of the relevant State or Territory;

c. prohibit the sale of prescribed water-use and water-saving products unless the products are registered in accordance with the relevant WELS standard and comply with the water efficiency labelling, minimum water efficiency and general performance requirements of the relevant WELS standard; and

d. in relation to offences,

i. in the case of Territory Bills, reference the *Criminal Code*;

ii. in the case of State Bills, provide for an outcome equivalent to references in the Commonwealth Act to the Criminal Code, where appropriate.

5 MAINTENANCE OF CONSISTENT SCHEME

5.1 Legislation to be nationally consistent

5.1.1 The Commonwealth and the States and Territories will use their best endeavours to ensure that all legislation forming part of the Scheme will remain nationally consistent. This is to:

- make registration as easy as possible for businesses; the affected industry operates in national and global markets and it will be simpler for international businesses and Australian businesses operating in more than one State or Territory to have a single registration point for their products;
- minimise compliance costs for industry and thereby encourage compliance with the scheme; and
- comply with mutual recognition principles as adopted in the *Mutual Recognition Act 1992* and the *Trans Tasman Mutual Recognition Arrangement*.

5.1.2 The Commonwealth will inform the other Parties of changes to the monetary value of Penalty Units as soon as practicable, and the other Parties will use their best endeavours to maintain parity with the value of these Penalty Units in their own penalty regimes for the Scheme.

5.2 Amending and new legislation

5.2.1 If a Party proposes to amend legislation forming part of the Scheme, that Party will submit the proposed amendments to the other Parties for consideration at least 6 months prior to introducing the amendments, or within a reasonable time where it is necessary to act more quickly.

5.2.2 If a Party proposes to introduce legislation or amend existing legislation that may affect the Scheme, that Party will give written notice to the other Parties of the effect of the legislative proposals on the Scheme at least 6 months prior to introducing or amending the legislation, or within a reasonable time where it is necessary to act more quickly.

5.3 Determinations under the Commonwealth Act

5.3.1 Subject to clause 4.1.1.(c), if the Minister proposes to make a determination under the Commonwealth Act, the Minister will give written notice to the other Parties of the effect of the proposed determination on the Scheme at least 6 months prior to making the determination, or within a reasonable time where it is necessary to act more quickly.

6 WATER EFFICIENCY LABELLING AND STANDARDS ADVISORY COMMITTEE

6.1 Establishment of the Committee

6.1.1 For the purposes of the Scheme, there will be an advisory Committee known as the Water Efficiency Labelling and Standards Advisory Committee (the Committee).

6.1.2 The Committee will consist of one representative of each Party and be chaired by the Commonwealth representative.

6.1.3 The Committee may resolve to invite others, such as representatives from industry, consumer and environmental groups, to attend and participate in a meeting of the Committee as observers.

6.2 Functions of the Committee

6.2.1 The functions of the Committee are to:

a. oversee the implementation of the Scheme;

b. provide a forum for consultation between the Parties;

c. provide advice to the Regulator or the Minister or any relevant ministerial council on:

i. products to be prescribed for the purposes of the Scheme;

ii. the WELS standards to be prescribed for the purposes of the Scheme, including any labelling, minimum water efficiency and general performance requirements;

iii. national strategies for effective compliance and enforcement;

iv. the co-ordination of State, Territory and Commonwealth resources in relation to the administration and enforcement of the Scheme;

v. the administration of the Scheme generally; and

vi. related water policy and other related matters;

and

d. perform any other function conferred on the Committee by this Agreement.

6.2.2 The Committee will develop the following on an annual basis for the consideration of the Regulator in relation to the Scheme:

a. an annual work plan;

b. a compliance and enforcement plan; and

c. a budget plan.

6.3 Proceedings of the Committee

6.3.1 The Committee will meet approximately every six months or at such times as it sees fit and will, subject to this Agreement, determine its own procedure.

6.3.2 A resolution before the Committee will be carried if, and only if, a majority of all members of the Committee vote in favour of the resolution.

7 FUNDING ARRANGEMENTS

7.1 Apportionment of funding between the Parties

7.1.1 The Commonwealth will provide the funds required for the establishment and operation of the regulatory system under the Scheme until 30 June 2005, or the commencement of the scheme, whichever is the earlier. The legislation will provide for possible cost recovery through the charging of application and licence fees, to the extent consistent with Commonwealth policy on cost recovery.

7.1.2 The Parties will provide any other funds that the Environment Protection and Heritage Council decides are required for the ongoing operation of the regulatory system under the Scheme from 1 July 2005, in accordance with the usual Environment Protection and Heritage Council formula, namely 50% Commonwealth funds and 50% from the States and Territories on a *pro rata* population basis.

7.2 Special Account

7.2.1 For the purposes of the Scheme, the Funds will be quarantined in a Special Account (the WELS Account, established by subsection 64(1) of the Commonwealth Act) as contemplated by section 21 of the *Financial Management and Accountability Act 1997*.

7.2.2 An amount corresponding to all funds contributed by the States and Territories and appropriated by the Commonwealth will be credited to the WELS Account.

7.2.3 Any funds not spent in a given financial year will be rolled over into the following financial year.

7.3 Use of the Funds

7.3.1 The Funds may be used for purposes in connection with furthering the objects of the Scheme, including:

a. the establishment and continued operation of the regulatory system provided for under the Scheme;

b. reimbursing the Parties for costs reasonably incurred in the performance of functions on behalf of the Regulator, for example compliance and enforcement activities; and

c. making payments in connection with the performance of the Regulator's functions.

8 INFORMATION

8.1 Exchange of information between the Parties

8.1.1 The Commonwealth will provide the other Parties with access to both publicly available and, where permitted by law, confidential information held by the Regulator in connection with the administration and enforcement of the Scheme.

8.1.2 Each Party will exchange with the other Parties such information in relation to the administration of the Scheme as is necessary to facilitate:

a. the effective and efficient operation of the scheme;

b. monitoring the success of the scheme; and

c. the functions of the Committee.

8.1.3 The Commonwealth will provide each State and Territory member of the Committee with a copy of the annual report to be prepared by the Regulator under Section 75 of the Commonwealth Act, within 3 working days after having the report tabled in both Houses of Parliament.

9 REVIEW

9.1 Review of implementation and effectiveness

9.1.1 The Parties will review this Agreement and the Scheme concurrently with the review of the Scheme to be conducted by the Commonwealth Minister under section 76 of the Commonwealth Act. The review under section 76 of the Commonwealth Act will be conducted in consultation with the Parties.

9.1.2 Selection of the persons to undertake that review of the Scheme and the setting of terms of reference for that review will be undertaken in consultation with the Parties. The terms of reference will, inter alia, address the consistency between the Acts in each jurisdiction, for example in relation to penalty levels. The Parties will subsequently review this Agreement and the Scheme at intervals of no more than 5 years.

9.1.3 Each review will invite public submissions and be conducted in consultation with:

a. the Regulator;

b. the Committee;

c. the Minister; and

d. such others, including consumer, environmental and industry groups, as the Parties considers appropriate.

9.1.4 If, after a review, the Parties agree that legislative amendment should be undertaken, the Parties will endeavour to implement any agreed amendments as soon as practicable, recognising the obligation under clause 5.1.1 to maintain national consistency with the Scheme.

10 VARIATION

10.1 Variation by agreement

10.1.1 This Agreement may be varied if each of the Parties agrees to the proposed variation in writing.

11 WITHDRAWAL AND TERMINATION

11.1 Withdrawal

11.1.1 A Party may withdraw from this Agreement by giving the other Parties at least 6 months notice, in writing, of its intention to withdraw from the Agreement.

11.2 Termination

11.2.1 This Agreement may be terminated if each of the Parties agrees to the termination in writing.

12 DISPUTE RESOLUTION

12.1 Informal resolution

12.1.1 The members of the Committee will negotiate to resolve a dispute that arises under this Agreement.

12.2 Referral to Environment Protection and Heritage Council

12.2.1 Where the Committee is unable to resolve the dispute in accordance with clause 12.1.1, the dispute will be referred to the Environment Protection and Heritage Council for resolution.

Note: Signature pages have not been replicated here.

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