



AUSTRALIAN BUILDING CODES BOARD

Discussion Paper

**Feasibility of Point of Sale Regulation
for the WaterMark Certification Scheme**

January 2018

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1. Introduction

1.1. About the feasibility study

The WaterMark Certification Scheme (the 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.

Regulation of the Scheme is undertaken at the point of installation by the State or Territory Plumbing Administration having jurisdiction. This places the responsibility for compliance on plumbing practitioners and ongoing enforcement on the State and Territory Plumbing Administrations.

Since the Australian Building Codes Board (ABCB) commenced its review of the Scheme, which concluded in 2015, industry members (particularly plumbing product manufacturers and installers) and some State and Territory Plumbing Administrations have consistently sought a more effective approach to the regulation of plumbing products. These stakeholders have expressed support for enforcement of the Scheme at the point of sale (POS).

The Scheme Owner is the Commonwealth of Australia, acting on behalf of the Commonwealth of Australia, the State of New South Wales, State of Queensland, State of Victoria, State of South Australia, State of Tasmania, State of Western Australia, the Australian Capital Territory and the Northern Territory.

The ABCB is the body appointed by the Scheme Owner to manage and administer the Scheme as a national scheme. The ABCB is a joint initiative of all levels of government in Australia, together with the building industry. Its mission is to oversee issues relating to health, safety, amenity and sustainability of buildings. The ABCB promotes efficiency in design, construction and performance of buildings through the National Construction Code (NCC) and the development of effective regulatory and non-regulatory approaches. The ABCB aims to establish effective and proportional codes, standards and regulatory systems that are consistent between the States and Territories.

Part A2 of the NCC Volume Three – Plumbing Code of Australia (PCA) requires certain plumbing and drainage products to be certified and authorised for use in a plumbing or drainage installation. These plumbing and drainage products are certified and authorised for use through the Scheme.

At present Australian Consumer Law does not place an onus on those selling plumbing products to ensure they are compliant with the Scheme.

It is proposed that responsibility for product compliance would be extended to plumbing product suppliers / wholesalers / retailers and the perceived outcome would be that products listed on the WaterMark Schedule of Products (WMSP) could only be offered for sale if they were WaterMark certified, thus minimising opportunities for non-conforming products to be supplied for installation. This would reduce the burden on licensed plumbers at the point of installation. Additionally, increased emphasis on compliance targeting a substantially fewer number of sellers could be more efficient and effective compared with efforts to achieve compliance with thousands of licensed practitioners.

A project to investigate the feasibility of, and possible options regarding, POS regulation for the Scheme, with the States and Territories, is included on the ABCB's 2017-18 Work Program (refer **Appendix B - Terms of Reference**). Possible POS regulation of the Scheme has been partially explored during the various reviews of the WaterMark and Water Efficiency Labelling and Standards (WELS) schemes, and predominantly with industry stakeholders.

1.2. About the discussion paper

This paper has been prepared to initiate discussion and feedback among people and organisations that are affected by, or involved in, the Scheme's ongoing administration and future direction. It includes an overview of how the Scheme operates; a description of the problem and issues to be considered; proposes options to address the problem; and lists a number of questions as a means of assisting respondents in developing feedback.

It should be noted that the content of this paper is largely informed by consultation undertaken during the ABCB review of the Scheme, and afterwards as agreed improvements to the Scheme were developed and implemented with key stakeholder representatives. Formal consultation with the State and Territory Plumbing Administrations and consumer law regulators (where relevant), the WELS Administration and relevant industry representatives, which will expand on the issues and options identified in this paper, will commence soon after publication of this paper.

The feedback provided will be used to further inform ABCB consideration of the findings and recommendations regarding stakeholder support, possible options and the feasibility to implement, POS regulation of WaterMark. The ABCB encourages respondents to provide detailed information and data in their submissions, including substantiation with evidence or quantification, of statements of fact that address the Terms of Reference and any of the questions posed in this paper.

Feedback is to be emailed to watermark@abcb.gov.au with **POS Comment** in the subject line.

The closing date for receipt of feedback is **5.00pm Monday 12 February 2018**.

1.3. Project timetable

The project is being undertaken by the ABCB Office and its consultants according to the following timetable over a period of approximately six months.

ACTIVITY	DATE
Project commencement	November 2017
Discussion paper published	January 2018
Public comment submission period	January-February 2018
Consultation meetings	February-March 2018
Preliminary report due	April 2018

2. Operation of the WaterMark Certification Scheme

The objectives of the Scheme are to establish the requirements for product certification and authorisation under Part A2 of the PCA and:

- a) to provide a process to authorise products to enable their use in plumbing and drainage installations as covered by the PCA; and
- b) to ensure that plumbing and drainage products are fit for the purpose for which they are intended and that their use in a plumbing and drainage installation throughout its serviceable life is suitable and does not create significant risks or any likely outcome of:
 - (i) personal illness, loss, injury or death;
 - (ii) on-site environmental degradation;
 - (iii) contamination of the water resource;
 - (iv) adverse impact on infrastructure (private or public);
 - (v) contamination of water supplies from the point of connection to the points of discharge;
or
 - (vi) wastage of resources (water and energy).

The Scheme is governed by the Rules for the WaterMark Certification Scheme (Rules) that outline the requirements for the use of the Mark of Conformity, and the Manual for the WaterMark Certification Scheme (Manual), which outlines the requirements for product evaluation and certification, risk assessment and developing product specifications.

In order to achieve WaterMark certification, the subject product needs to:

1. be tested by an accredited testing laboratory;
2. comply with an applicable specification;
3. be manufactured in accordance with an approved quality management system; and
4. clearly state its intended scope of use.

Products complying fully with the applicable requirements of the Scheme are then eligible to be certified by a WaterMark Conformity Assessment Body (WMCAB) and listed on the WaterMark Product Database (database). Certified products are identifiable by the WaterMark trade mark, which must be displayed on a product upon the granting of a WaterMark Licence.

It is important to note that not all plumbing and drainage products require WaterMark certification. All products to be used in a plumbing and drainage installation require a risk evaluation to be undertaken. A comprehensive listing of predetermined product types that require WaterMark certification is contained on the WMSP. Likewise, the WaterMark Schedule of Excluded Products lists predetermined products that are excluded from the Scheme.

WMCABs evaluate and certify products against product specifications listed on the WMSP.

State and Territory laws place a responsibility on licensed plumbing practitioners for ensuring that, where a product is listed on the WMSP, only WaterMark certified products are used in a plumbing and drainage installation.

Further information about the operation of the Scheme may be found on the ABCB website at www.abcb.gov.au.

3. Problem

The current practice of regulation at the point of installation places the primary responsibility of compliance with the plumbing product fit-for-purpose requirements of the PCA, outlined in clause A2.1 (b), on plumbing practitioners and ongoing enforcement on the State and Territory Plumbing Administrations. This method of compliance is challenged by a potential lack of awareness of the requirement for WaterMark certification of certain plumbing products during the plumbing design, procurement and installation phases and insufficient resources for State and Territory Plumbing Administrations to effectively monitor and enforce the regulation.

Currently, plumbing and drainage products can lawfully be sold without WaterMark certification. However, in accordance with the PCA, if the product is listed in the WMSP but has not been WaterMark certified, the installation may not be accepted by the State or Territory Plumbing Administration having jurisdiction.

Importantly, a licensed plumber is not permitted to install these products. Consequently, if a consumer / building owner / practitioner has specified or purchased a product listed on the WMSP that is not WaterMark certified, the procurer or installer may only become aware the product is not authorised for use at the time of installation. Obtaining a suitable replacement (i.e. WaterMark certified) product is likely to result in project delays and disruption, with flow on impacts and additional costs incurred by multiple project stakeholders.

Plumbing practitioners may also, however, install non-conforming product due to lack of awareness or commercial pressure. Rectification and replacement work undertaken post-installation would likely involve even greater impacts and higher costs for affected parties.

During consultation activities for the Scheme review (refer [Appendix C – Review of the WaterMark Certification Scheme – Consultation Draft – Extract](#)), industry and government stakeholders indicated the Scheme needed to be supported by greater awareness raising and promotion activity to raise its profile, increase awareness of its requirements and improve compliance. Many believed that plumbers were generally aware of their obligations, but other parties responsible for selecting and purchasing product for practitioners to install, such as consumers, designers, suppliers and building practitioners, were not.

Industry stakeholders felt that WELS was better known than WaterMark because there had been more publicity about the scheme and there were controls at the point of sale.

The level of responsibility for Scheme compliance placed on plumbing installers was considered inequitable. Stakeholders felt that designers and suppliers should share some of this responsibility and that consumers and building practitioners responsible for procurement needed to better understand the requirements placed on installers and source appropriate WaterMark certified products.

Concerns were raised about the low levels of inspection (estimated at 5-15% of all plumbing work) and lack of enforcement of the Scheme undertaken by the Plumbing Administrations. Well-resourced and nationally consistent enforcement was considered necessary to support compliance with the PCA.

Finally, stakeholders were of the view that (local) manufacturers and suppliers are the most informed group in the supply chain. They are relied upon to supply appropriate plumbing products that are fit for purpose. However, the view was also expressed that the increasing prevalence of online and international markets supplying direct to consumers or building sites is further contributing to poor compliance. This growing trend is particularly challenging for local suppliers who operate in a highly competitive global market that is not necessarily concerned about or aware of Australian regulations and requirements, and for plumbing practitioners who are required to comply with the terms of their licence, yet may be supplied with non-WaterMark certified products and expected to install them.

During the review and consideration of future options for the Scheme, the ABCB undertook regulatory analysis, including the development and receipt of comments on a Consultation Regulation Impact Statement (RIS) and publication of a Regulatory Commentary after consultation. No data showing systematic problems in plumbing and drainage systems could be found. The analysis concluded that there was no indication of a fundamental problem with the Scheme in its role of ensuring that plumbing and drainage products are fit for purpose.

A number of issues with the Scheme were identified as being important to address, but these did not warrant a material change to the Scheme. These issues provided the basis for the ABCB to improve the performance of the Scheme and have been reflected in the development of the improved Scheme.

3.1. Plumbing industry information

Information and data relating to the plumbing industry is not provided by a definitive source. The Australian Bureau of Statistics (ABS) does not specifically identify plumbing or drainage activities in its publications, so data showing plumbing industry size by value or number of manufacturers / suppliers is not available from the ABS. Neither the stakeholders involved in the Scheme review consultation activities, nor any of the respondents to the Consultation RIS, were able to provide plumbing industry data.

WaterMark data, including from the product database, indicates there are around 450 manufacturers of plumbing products supplied to the Australian market, around 2000 WaterMark licences issued and around 100,000 WaterMark certified products. The proportion of overseas manufacturers is more than 50%, and one stakeholder suggested it was about 75%.

ABCB data studies, including those generated from the NCC subscriber database, indicate there are about 60,000 plumbing practitioners in the industry (comprising around 1500 hydraulic consultants and 58,500 plumbers), and about 200,000 building practitioners (comprising architects, engineers, building designers and builders).

Plumbing and building practitioners acquire products from industry outlets, and some from retail hardware outlets and online direct. Consumers and building owners are more likely to purchase products from retail hardware outlets and online direct, than from industry outlets.

Comments are sought on the nature and extent of the problem that POS regulation is being proposed to address. For example:

- 1. Does the discussion above accurately reflect the nature of the problem?**

- 2. What other aspects about the problem could be included?**
- 3. What evidence exists of the extent of the problem, and of its contribution to PCA non-compliance?**
- 4. What additional data or information is there pertaining to the plumbing industry, including the sale and installation of plumbing products?**

4. Feasibility issues

The Terms of Reference for this feasibility study includes consideration of the following issues and other matters.

4.1. Enforcement by State and Territory regulators

POS compliance will be enforceable under State and Territory plumbing control legislation or consumer law legislation. The State and Territory Plumbing Administrations have indicated a 50/50 split between jurisdictions is likely – some are not yet sure. The responsible regulator in each jurisdiction will need to be confirmed to determine any implications this will have on the proposal. Different priorities, capacity and available resources, and other issues have the ability to influence the shape of POS legislation and impact its development and implementation. Such legislation will not be effective, or even possible, without commitment and willing participants from all jurisdictions.

There is a need for a nationally consistent approach to POS enforcement to ensure a level playing field for stakeholders, optimise compliance outcomes, and to enable regulators to minimise their costs through information sharing, uniform procedures and processes, etc. Economies for the development and delivery of awareness, training and promotion activity are also possible with a ‘national’ approach.

Enforcement of POS will be resource intensive and presently State and Territory resources available for plumbing enforcement are already considered inadequate. Sufficient resources for monitoring and enforcement are required so that adequate compliance checks and robust penalties for non-compliance can be administered to ensure compliance with the requirements.

The study will explore the resources required, and other implications, for effective enforcement of POS regulation. It will also look at how the WELS Administration enforces compliance, including for online sales (refer **Issue 4.5.** below).

Comments are sought on issues relating to the enforcement of POS regulation by the State and Territory regulators. For example:

- 1. Will POS compliance be enforceable under State and Territory plumbing control legislation or consumer law legislation in each jurisdiction?**
- 2. Does each jurisdiction support the introduction of national POS legislation for which they will be responsible? How can achieving a national approach to enforcement be facilitated?**
- 3. What resources will be required for the ongoing administration, monitoring and effective enforcement of POS regulation for the Scheme by individual jurisdictions? How will these resources be funded?**
- 4. What other implications are there for the jurisdictions?**
- 5. How does the WELS Administration enforce compliance? What resources are allocated to enforcement, and is this considered adequate? Specifically, how is compliance for online sales approached?**

4.2. Potential for regulatory duplication

The study will consider the potential for regulatory duplication if POS compliance adds new regulation rather than replacing the need for compliance at the point of installation (ie POS would not necessarily displace the need for compliance at the point of installation). All State and Territory Plumbing Administrations have indicated that requirements for licensed practitioners to comply with the PCA requirements for the installation of certain WaterMark certified products would likely remain.

Without a demonstrated history of product failures within the Scheme and non-compliance with the PCA by licensed practitioners, POS may be difficult to justify having regard to the objectives of deregulation.

Comments are sought on the potential for regulatory duplication. For example:

1. **If POS controls are introduced, will each State and Territory Plumbing Administration retain controls at the point of installation? If yes, would the current controls be retained, or could they be modified in response to the introduction of POS controls?**
2. **Will the introduction of POS controls for the Scheme impact the enforcement of point of installation controls in other ways? If yes, how?**
3. **If point of installation requirements are retained with the introduction of POS compliance, how will it impact purchasers, suppliers and/or installers of plumbing products?**

4.3. Mechanisms for the continued sale of non-WaterMark products

The study will consider mechanisms for the continued sale of non-WaterMark certified plumbing products intended for use outside the scope of the PCA. As some products have multiple uses – eg both plumbing and environmental applications – it is important for suppliers to be permitted to sell products intended for applications outside the scope of the PCA. Suitable mechanisms should not be ambiguous for purchasers to interpret nor onerous for industry to implement.

Queensland has permitted plumbing products not intended for use in, or connected to, a building, to be sold without WaterMark certification, provided the product has a compliant label clearly indicating it is not suitable for use in, or connected to, a building.

Comments are sought on possible mechanisms for the continued sale of non-WaterMark certified plumbing products intended for use outside the scope of the PCA. For example:

1. **Does the discussion above accurately reflect the nature of the issue? If not, what else needs to be considered?**
2. **How suitable is the Queensland mechanism for addressing this issue? What other mechanisms could address the issue?**

4.4. Different approaches for medium and high risk products

Another matter for the study to explore is the possibility of introducing different POS approaches for medium and high risk plumbing products. This has been raised by some stakeholders and will be further explored. Different approaches could, for example, entail different requirements for compliance, or limit the POS requirements to only high risk products.

Applying different approaches for high and medium risk products has the potential to mitigate negative impacts resulting from possible regulatory duplication. Conversely, different approaches may introduce further complexity to the regulation of plumbing products. The latter could be considered contrary to the post-review move to a simplified, single level improved Scheme.

Comments are sought on possibility of introducing different approaches for medium and high risk products. For example:

- 1. What other approaches for medium and high risk products could be considered?**
- 2. Why would having different POS approaches for medium and high risk products be preferable to a single approach for all products?**
- 3. How could medium and high risk products be categorised?**

4.5. Potential for online sales to bypass POS controls

The study will consider the potential for online sales (especially those direct to consumers or building sites) to bypass POS controls. As outlined in **Section 3** above, plumbing products are increasingly procured online, and direct to site, from both local and international suppliers.

This trend is likely to continue and presents a challenge for both the monitoring and enforcement of POS controls. Educating suppliers about the POS requirements and applying penalties for non-compliance is also more difficult, particularly with regard to international suppliers. Inequitable enforcement of POS controls could diminish efforts to create a level playing field for all suppliers in the market. This matter links with **Issue 4.1** above and is common to the WELS Scheme.

Comments are sought on the potential for online sales to bypass POS controls. For example:

- 1. Does this matter present issues for Scheme stakeholders? What additional information can be provided about the issue and its impacts?**
- 2. How does the WELS Administration approach compliance for online sales? How effective have such initiatives been?**
- 3. What options are there for overcoming the challenges online sales present for POS compliance?**

4.6. Strategies for engaging with suppliers

Strategies for engaging with, and gaining support from, suppliers of plumbing products will also be considered as part of the study. As a stakeholder group, wholesalers, retailers and other suppliers of plumbing products are relatively unknown to the ABCB; many are unlikely to subscribe to the NCC nor be represented on a peak technical body responsible for providing advice to the ABCB on the development of the PCA.

Comments are sought on possible strategies for engaging with suppliers of plumbing products, including retailers and wholesalers. For example:

- 1. What strategies would assist the ABCB to engage effectively with suppliers of plumbing products?**
- 2. How does the WELS Administration engage with suppliers of plumbing products?**

4.7. Possible role for the ABCB

The study will be exploring the possible role, if any, for the ABCB in facilitating POS regulation for the Scheme.

The ABCB Office may be able, if requested, to assist with the consultation, development of model regulatory framework and RIS aspects of implementation. The ABCB cannot, however, mandate adoption by the States and Territories nor undertake enforcement. The shape and form of the legislation would not be under the jurisdiction of the ABCB.

Comments are sought on the possible role, if any, for the ABCB. For example:

- 1. Do stakeholders see a role for the ABCB in facilitating POS for the Scheme beyond investigating its feasibility? If yes, how?**

5. Proposed options

A number of possible options for addressing the problem have been identified and explored below. The study will undertake further analysis of these options and any other options that are identified. The analysis will include an assessment of the likely governance, effectiveness, complexity, resources required, timeframes for establishment, and costs and benefits, for each option, and comparison with the status quo.

Two options do not impose additional requirements for POS regulation. The first is to maintain the status quo, particularly as many of the features of the improved Scheme implemented on 1 August 2017, which target awareness of, compliance with and enforcement of the Scheme requirements have yet to be fully realised. The issue is more a legacy of the existing Scheme inherited by the ABCB in 2013 and the extent to which improvements will address any problems identified through the Scheme's review.

A second option proposes taking a more targeted approach to increasing awareness of the Scheme requirements, particularly at the point of sale and with those responsible for procurement, as a non-regulatory option for addressing the problem, consistent with COAG best practice regulation.

Whilst these two options do not propose prohibiting the sale or supply of non-WaterMark certified product, they are aimed at further strengthening the Scheme along the whole supply chain to encourage market forces to address the problem. By increasing awareness and supporting enforcement of the Scheme and its requirements, demand for WaterMark certified product would be expected to increase, resulting in a corresponding reduction in the supply of non-WaterMark certified product. Opportunities for, and the acceptance of, non-compliance would also be reduced, thus overall levels of compliance would improve.

All other options propose the introduction of POS regulation of WaterMark.

Comments are sought on each of the options presented below. For example:

- 1. What is the likely effectiveness of the option?**
- 2. What degree of complexity is the option likely to entail?**
- 3. What resources are likely to be required for development, implementation, administration and enforcement of the option?**
- 4. What time frame will be likely for the establishment of the option?**
- 5. What are the likely costs and benefits, including their distribution to stakeholders, for the option? How does this compare with the status quo?**
- 6. What other options for addressing the problem could be considered?**

Comments sought on specific options are located after each is presented below.

5.1. Maintain the status quo

This option is to continue with the current arrangements where suppliers / wholesalers / retailers can lawfully sell plumbing and drainage products that are listed on the WMSP but have not been WaterMark certified. Consumers / installers will continue to have the option of purchasing non-WaterMark certified plumbing and drainage products at the point of sale and licensed plumbing practitioners will continue to be required to ensure that, where a product is listed on the WMSP, only WaterMark certified products are used in a plumbing and drainage installation.

It is a requirement of certification is to display the WaterMark trade mark on the certified product and/or packaging and to provide a scope of use for the product, with installation information, that is clearly visible and comprehensible to the intending purchaser and user. This is to enable the selection of products that are fit for the intended purpose and the appropriate application and correct installation of products. The onus to ensure that a product is correctly marked by the WaterMark licence holder is placed on the WMCAB when certifying a product.

Under the improved Scheme, WMCABs are also required to undertake annual surveillance of products they have certified from the factory, warehouse or market, to ensure they continue to meet these certification requirements. The Scheme Owner undertakes a regime of audit, as does the Accreditation Body, to ensure WMCABs are complying with the Scheme Rules.

The Scheme requires licence holders to withdraw and/or recall non-compliant product. This includes non-compliance with both the product specification and the marking requirements.

Key features of the improved Scheme that specifically address certain aspects of the problem are outlined below.

Single level scheme

A simplified, prescriptive, single level scheme based on AS/NZS ISO/IEC 17067 for all products that remain in the Scheme will remove some of the complexity, ambiguity and confusion, and thus reduce opportunities for non- and/or inconsistent compliance. It also requires annual surveillance via testing or inspection by WMCABs of physical product from or intended for, the market, and testing of samples from the market prior to recertification of products every 5 years, or when there are changes to the product or specification.

Revised Scheme Rules and consolidated documentation

The revised Scheme Rules and Scheme documentation have been consolidated into a single document – Manual for the WaterMark Certification Scheme (Manual) – that is independent of the PCA and freely available to the public. The Manual is a primary referenced document of the PCA. The roles and responsibilities of, and agreements for, the Scheme participants are located within the Manual, as are the revised risk assessment and specification development processes. The Manual and the WaterMark Technical Specifications have been made freely available on the ABCB website at www.abcb.gov.au.

New WaterMark product database

The database, with enhanced user interface and search functionality, has been updated to be reflective of the needs of the WaterMark Administration, State and Territory Administrations, practitioners and the general public. The database can be accessed from the on ABCB website at www.abcb.gov.au.

WaterMark certificates and products can be searched by WaterMark licence number, licensee name, product specification, product type, brand name, model name or model identification, with additional filters to enable refined searching. From the search results a specific certificate or product may be selected to view more detailed information. This provides a simple means of verifying that plumbing and drainage products have WaterMark certification.

The combination of the new administrative tools will significantly improve stakeholder access to Scheme information and make it easier for the WMCABs to keep this information up to date.

Communication, marketing and education strategies

To support the transition to the improved Scheme and to improve awareness of the Scheme and its requirements more generally, communication, marketing and education strategies are being developed and implemented, along with a range of tools and resources, in partnership with industry and the State and Territory Plumbing Administrations.

The objective of these strategies is to develop better informed stakeholders, along the whole supply chain, with improved confidence and commitment to the Scheme, to increase overall compliance with the Scheme.

The PCA is a relatively new addition to the NCC, and likewise, responsibility for the Scheme has only recently transferred to the ABCB. A challenge for the ABCB is in identifying relevant industry stakeholders, determining their respective needs, and establishing and developing effective relationships with them and their representatives. The ABCB will be relying on the State and Territory Regulators and key industry associations to assist with the development and dissemination of suitable education, awareness and communication initiatives.

Comments are sought on Option 5.1. For example:

- 1. Do you support the Option to maintain the status quo? Why?**

5.2. Increase awareness of point of installation requirements

Under this option, improvement of point of installation compliance of plumbing and drainage products with the requirements of the Scheme could be achieved by increasing awareness of these requirements, particularly at the point of sale and with those responsible for the procurement of plumbing products for installation.

Whilst, as noted in **Option 5.1** above, the agreed Scheme improvements include communication, education and awareness strategies to support Scheme stakeholders to increase overall compliance with the Scheme, the allocation of additional resources to deliver a more comprehensive suite of initiatives targeted specifically for use at the point of sale may be an effective approach for addressing the problem.

Such strategies could target suppliers and staff of retail and trade stores, building practitioners such as designers, project managers and contractors who specify and procure plumbing products, plumbing practitioners who specify, procure and install plumbing products and consumers who also procure plumbing products. Although not banning the sale of products that don't have WaterMark certification, increased awareness may improve compliance because parties, other than the installers, along the supply chain will become more aware of the plumbing installer's obligations to comply with the PCA and may be more likely to assist by supplying WaterMark certified products.

Comments are sought on Option 5.2. For example:

- 1. Do you support the Option to increase awareness of point of installation requirements? Why?**

5.3. Introduce point of sale regulation via model legislation

Under this option, new model legislation could impose requirements that would be available for each State and Territory to adopt in plumbing control legislation and/or consumer law legislation to ensure that, where a plumbing and drainage product is listed on the WMSP, only WaterMark certified products are sold.

Having the States and Territories implement this measure through legislation provides a framework for suppliers / wholesalers / retailers that must be followed. Practically, it would require education of suppliers / wholesalers / retailers, systems to enable recording of products and above all a willingness of the States and Territories to develop, implement and enforce the legislation.

The regulation of electrical equipment safety and gas product safety, like plumbing regulation, is the responsibility of the States and Territories, and each jurisdiction has their own mandatory requirements. The Electrical Regulatory Authorities Council (ERAC) Electrical Equipment Safety Scheme (EESS) and the Gas Technical Regulators' Committee (GTRC) Scheme have been developed to nationally harmonise technical, certification and registration requirements for products. Both have POS requirements, including for the registration of certified products by suppliers within their respective scheme rules. Neither scheme is mandatorily or uniformly adopted nationally. Most jurisdictions are committed to adopting the EESS through an Inter-Governmental Agreement (IGA) process but only a few have mandated the Scheme. The mandating of the GTRC Scheme has been deferred.

Both these 'safety' schemes are examples of model legislation for the certification and registration of products. They provide insight into what model POS legislation can look like and what it takes to develop, implement and maintain such legislation. Further information about the EESS can be found on the ERAC website at www.erac.gov.au and about the GTRC Scheme on the GTRC website www.gtrc.gov.au.

Whilst not 'model' legislation per se, **Example 1** below, outlines key features of POS regulation, specific to plumbing and drainage work, recently introduced in Queensland in response to the prevalence of, and associated health and safety risks associated with, non-conforming building products.

As these new laws were introduced in late 2017, neither the full impact of the expected costs or benefits have been realised, nor the effectiveness in addressing objectives. Additionally, at this stage, the ABCB has few details about how these new regulations will be administered and enforced. It does, however, provide another example of what such legislation could look like.

The study will further explore the EESS, GTRC Scheme, the new laws in Queensland and any other relevant examples to consider whether the option of establishing model POS legislation for the Scheme is feasible. It must be noted, however, that as the ABCB is not a regulatory authority it cannot mandate that the States and Territories implement model POS legislation and nor can it administer legislation. Therefore this option would only be feasible if uniform adoption by all States and Territories and nationally consistent administration and enforcement is achieved.

Example 1:

In Queensland, the Building and Construction Legislation (Non-Conforming Building Products – Chain of Responsibility and other matters) Amendment Act 2017 recently amended the Queensland Building and Construction Commission (QBCC) Act, creating a chain of responsibility for what are known as non-conforming building products, which captures plumbing and drainage products incorporated into, or connected to, a building.

Under the amendment, all parties involved in the building product supply chain, from the designers, manufacturers and importers to the suppliers and installers, can now be held accountable for building products that are non-conforming for an intended use.

With a few exceptions, the new provisions make it an offence to supply a product for installation in (or for) plumbing and drainage work for a building, if the installation does not, or will not, comply with the relevant regulatory provisions – eg the PCA requirements for the installation of certain WaterMark certified products. The new provisions also make it an offence to install a product in (or for) plumbing and drainage work for a building, if the installation does not, or will not, comply with the PCA.

The QBCC is responsible for compliance – for investigating and addressing situations involving non-conforming building products. The QBCC can issue specific penalties to non-compliant sellers (designers / manufacturers / importers / suppliers) in the form of penalty offences, each of which attract a maximum fine (presently ranging from about \$6000 – \$120,000 per offence).

Plumbing products not intended for use in, or connected to, a building may be sold without WaterMark certification as long as the product has a compliant label clearly indicating it is not suitable for use in, or connected to, a building.

It is expected that the new provisions will result in fewer buildings needing rectification work in the future, resulting in significant savings. It is also expected that fewer people will suffer injury, illness, or loss of life as a result of the amendment.

Further information about the Queensland provisions may be found at www.hpw.qld.gov.au.

Comments are sought on Option 5.3. For example:

- 1. Do you support the Option to introduce point of sale regulation via model legislation? Why?**
- 2. If yes, what features would a model that you support have?**
- 3. What other models could be considered? Why?**

5.4. Introduce point of sale regulation via Commonwealth legislation

Under this option, new Commonwealth legislation could impose requirements that would be mirrored in each State and Territory plumbing control legislation and/or consumer law legislation to ensure that, where a plumbing and drainage product is listed on the WMSP, only WaterMark certified products are sold.

The WELS Act 2005 is an example of such legislation, although there are fundamental differences in the structure, objectives, administration and operation of the WELS and WaterMark Schemes.

As part of the review of the Scheme, the ABCB engaged George Wilkenfeld and Associates Pty Ltd to undertake the examination of possible linkages between the WELS and WaterMark schemes. The **Executive Summary** of this 2014 report is provided at **Appendix D**.

It should be noted that, as with the previous option, the ABCB is not a regulatory authority so it cannot mandate that the States and Territories implement such legislation nor can it administer such legislation. Therefore this option would only be feasible if uniform adoption by all States and Territories and nationally consistent administration and enforcement is achieved.

Example 2:

The WELS Scheme – established under the Commonwealth WELS Act 2005 and supported by uniform State and Territory legislation – aims to conserve water supplies by reducing consumption, through providing information to consumers about the water efficiency of products and by promoting the adoption of water efficient products and technologies. It is a POS scheme targeting some of the plumbing products which are also covered by the WaterMark Scheme and some water-using electrical appliances which are outside the scope of WaterMark.

The WELS Act places obligations on suppliers to test and register these products and to ensure that they are correctly labelled in advertisements and at the point of supply. Toilets and clothes washers are also subject to minimum water efficiency standards.

The WELS Regulator has also clarified that the ‘point of supply’ for WELS regulated product extends from manufacture to display in building developments.

Further information about the WELS Act and Scheme may be found at www.waterrating.gov.au.

Comments are sought on Option 5.4. For example:

- 1. Do you support the Option to introduce point of sale regulation via Commonwealth legislation? Why?**
- 2. If yes, what features would Commonwealth legislation that you support have?**
- 3. What other Commonwealth legislated models could be considered? Why?**

5.5. Introduce point of sale regulation enforced by the WELS Regulator

Under this option, revisions to the WELS Act (Commonwealth legislation) could impose requirements that would likewise be mirrored in State and Territory legislation to ensure that, where a plumbing and drainage product is listed on the WMSP, only WaterMark certified products are sold. The WELS Regulator, and each State and Territory plumbing control regulator and/or consumer law regulator, would have responsibility for enforcement of the POS requirements.

It should be noted that, as before, this option would only be feasible if uniform adoption by all States and Territories and nationally consistent administration and enforcement is achieved.

The report on [Linkages between the WaterMark and WELS Programs](#) (refer [Appendix D – Executive Summary](#)), found that:

- *The objectives the WaterMark Certification Scheme and the Water Efficiency Labelling and Standards scheme are compatible, but they are not interchangeable.*
- *The most obvious overlap between the schemes is that a particular group of plumbing products is covered by both schemes and therefore the suppliers of those products come into contact with both schemes.*
- *In almost every other respect, the schemes are significantly different with regard to regulatory structure, mode of operation and target groups.*
- *The objectives and structures of the two schemes are so different there is little merit in transferring responsibility for WELS registration, enforcement and communication for plumbing products to the WaterMark Administrator. Nor is it feasible to address water-efficiency solely through WaterMark.*
- *While formal linkages appear difficult, that should not preclude administrative or functional linkages where mutually beneficial:*
 - *development of a joint registration/database portal;*
 - *greater integration of test standards and laboratory requirements*
 - *co-operation on monitoring and compliance issues – for example, WELS inspections of plumbing product suppliers could note which products are marked with or lacking the WM symbol;*
- *If the WELS Act were amended to cover the public health and safety aspects of plumbing products as well as their water-efficiency, it may be possible in the long-term to unify the two schemes under the WELS Regulator. A change of this magnitude would require the agreement of many stakeholders in government and industry, as well as formal cost-benefit analysis.*

WELS regulates five WaterMark regulated fittings: toilets, urinals, taps, showers and flow controllers. These products allow building occupants to manage some of their day to day consumption of water. WELS requires these products to have WaterMark certification as a prerequisite to WELS registration and has effectively prohibited the sale of these products if they have not been WaterMark certified.

WELS indirectly ‘polices’ and enforces aspects of the WaterMark Scheme by a) checking for, and rejecting, the registration of products without a valid WaterMark licence and b) taking action when WELS inspections in the market place reveal products being offered for sale without WaterMark or without the correct WaterMark detail.

For these products, such instances constitute breaches under WELS, but not necessarily breaches under WaterMark. Sale of a product that does not have WaterMark certification is not a breach under WaterMark, but sale of a product with false, misleading or inaccurate claims regarding WaterMark certification is. To that end, the WELS Administration notifies the Plumbing or WaterMark Administrations when the latter is detected.

WELS does not, however, regulate the vast majority of products listed on the WMSP that form part of plumbing and drainage installations that are required to comply with the PCA – those in the plumbing supply system that safely convey potable water to the outlets in buildings and the products in the sanitary drainage system that safely remove sanitary waste from buildings. Opportunities for information sharing between scheme administrations, should this be viable, is likely to be limited when so few products are common to both schemes.

Another issue is that whilst POS regulation of WaterMark certified products is proposed to be specifically targeted at the supply of product for installation, under the WELS Act, POS regulation of WELS labelled products extends well beyond the supply of uninstalled product to display of installed product in building developments.

To date, the administration, and the majority of the enforcement, of the WELS Scheme has been undertaken by the (Commonwealth) WELS Regulator, rather than the individual jurisdictions. The WELS approach to compliance has been to educate suppliers to help them meet their legal obligations.

Until recently, enforcement activity focused predominantly on the compliance of registrants with regard to product registration and correct listing on the WELS Register, and on product and labelling compliance via inspections made in the retail market. The WELS Scheme has been in place for over ten years, with industry becoming increasingly familiar with its obligations under the Act. In response, and due to growing volumes of online sales, the focus of WELS enforcement activity is shifting to other markets in the supply chain.

This study will explore what would be involved to overcome these issues, the likely impact and the feasibility of this option.

Comments are sought on Option 5.5. For example:

- 1. Do you support the Option to introduce point of sale regulation enforced by the WELS Regulator? Why?**
- 2. What options are there for overcoming the differences between the two schemes?**
- 3. How important is it that the schemes have so few products in common?**
- 4. What would be the implications for WaterMark requirements at the POS to be regulated by a different entity to that responsible for WaterMark requirements at the point of installation?**

Appendix A – References

Australian Building Codes Board (ABCB) website – www.abcb.gov.au

ABCB 2017, *Approved Certifier Agreement for the WaterMark Certification Scheme*

ABCB 2017, *Approved User Agreement for the WaterMark Certification Scheme*

ABCB 2014, *Ensuring that plumbing and drainage products are fit for purpose - a Regulatory Commentary after Consultation*

ABCB 2016, *Manual for the WaterMark Certification Scheme*

ABCB 2016, *National Construction Code – Volume Three – Plumbing Code of Australia*

ABCB 2014, *Options to ensure that plumbing and drainage products are fit for purpose - a Regulation Impact Statement for Consultation*

ABCB 2014, *Review of the WaterMark Certification Scheme – Consultation Draft*

ABCB 2017, *Rules for the WaterMark Certification Scheme*

ABCB, *WaterMark Schedule of Excluded Products* – located on the ABCB website (www.abcb.gov.au)

ABCB, *WaterMark Schedule of Products* – located on the ABCB website (www.abcb.gov.au)

Electrical Regulatory Authorities Council (ERAC) and Electrical Equipment Safety Scheme (EESS) website – www.erac.gov.au

Gas Technical Regulators' Committee (GTRC) and GTRC Scheme website – www.gtrc.gov.au

George Wilkenfeld and Associates Pty Ltd 2014, *Linkages between the WaterMark and Water Efficiency Labelling and Standards (WELS) Programs* [in confidence].

Queensland Building and Construction Commission (QBCC) website – www.hpw.qld.gov.au

Water Efficiency Labelling and Standards (WELS) website – www.waterrating.gov.au

Appendix B – Terms of Reference

The ABCB is exploring the feasibility of point of sale (POS) regulation of the WaterMark Certification Scheme (the Scheme) in response to requests from stakeholders during the review of the Scheme, who seek a more effective approach to the regulation of plumbing products and express support for POS enforcement.

The Scheme is a mandatory certification scheme for plumbing and drainage products to ensure they are fit for purpose and appropriately authorised for use in a plumbing and drainage installation. It is administered by the ABCB and is regulated at the point of installation by each State or Territory Plumbing Administration having jurisdiction.

The ABCB promotes efficiency in design, construction and performance of buildings through the National Construction Code (NCC). Volume Three of the NCC is the Plumbing Code of Australia (PCA). It requires certain plumbing and drainage products to be certified through the Scheme, granted a Certificate of Conformity, listed on the WaterMark Product Database and to display the WaterMark.

Products currently requiring certification are listed on the [WaterMark Schedule of Products](#). Products currently excluded from certification are listed on the [WaterMark Schedule of Excluded Products](#). Both these schedules and further information about the operation of the Scheme may be found on the ABCB website at www.abcb.gov.au.

The objective of the project is to investigate the feasibility of, and possible options regarding, POS regulation as a means of improving compliance with the PCA, and will include:

1. Exploring the feasibility, including issues such as:
 - whether compliance would be enforceable under State/Territory plumbing control legislation or consumer law legislation (a 50/50 split between jurisdictions is likely);
 - the potential for regulatory duplication if POS compliance adds new regulation rather than replacing the need for compliance at the point of installation, which all jurisdictions indicated they would likely maintain;
 - the need for a nationally consistent approach to POS enforcement;
 - the need for sufficient resources for monitoring and enforcement, to ensure that adequate compliance checks and robust penalties for non-compliance, can be administered;
 - mechanisms for the continued sale of non-WaterMark certified plumbing and drainage products intended for use outside the scope of the PCA;
 - possible different approaches for medium and high risk plumbing products;
 - the potential for online sales to bypass POS controls;
 - strategies for engaging with, and gaining support from, suppliers/wholesalers/retailers;
 - the Commonwealth legislative framework; and
 - how the WELS Regulator enforces compliance, including for online sales.

2. Exploring possible options, such as:
 - development of model legislation for State and Territory adoption;
 - a Commonwealth legislated option; and
 - enforcement by the WELS Regulator, noting this would require legislative changes as WELS falls under Commonwealth legislation and presently covers only a handful of products captured by the Scheme.
3. Analysis of the extent of the problem, assessment of likely effectiveness, complexity, resources, timeframes for establishment, and costs and benefits, including their distribution to stakeholders, for each option, and comparison with the status quo.
4. Exploring the possible role, if any, for the ABCB in facilitating POS regulation for the Scheme.

Appendix C – Review of the WaterMark Certification Scheme – Consultation Draft – Extract

During the review of the Scheme, the ABCB consulted broadly leading up to the release of the **Review of the WaterMark Certification Scheme - Consultation Draft** for public comment in January 2014.

Consultation activities included:

- WMCAB Workshop
- Joint Industry Workshops
- State and Territory Administrations Workshops
- 17 x Industry Interviews
- Interviews with WELS Team, Department of the Environment
- Interviews with Building Policy Section, Department of Industry
- WMCAB paper survey
- WM Approved User paper survey
- Stakeholder paper survey

Representatives of the following stakeholders were consulted during the workshops and interviews:

- Industry – manufacturers, importers, suppliers, designers, installers, testing laboratories, etc
- WMCABs
- Joint Accreditation System of Australia and New Zealand (JAS-ANZ) – WMCAB accreditation body
- State and Territory Plumbing Administrations
- Department of the Environment – WELS Administration
- Department of Industry – Commonwealth representative – ABCB Board
- Department of Industry – Commonwealth representative – Plumbing Code Committee

Chapter 7 - Consultation reported the consultation findings, including those relating to POS for the Scheme, the problem and associated issues. The findings relevant to POS are provided below.

WMCAB Workshop

- There is a need for education and awareness to raise the profile of the Scheme to support greater compliance (particularly with the move off-shore of manufacturers and testing laboratories and the associated technical expertise).

Joint Industry Workshops

- Industry is strongly of the view that the national approach and mandatory nature of the Scheme should remain. However, enforcement must be strengthened to support the Scheme.
- The WaterMark brand is well regarded across the industry but there is an issue in relation to awareness at the consumer level.

- There is a need for focus at point of sale to manage the on-line and international markets.
- Inconsistency of product marking is of concern.
- The efficacy of the database is an issue.

State and Territory Administrations Workshops

- Enforcement at point of sale is needed.
- Plumbers know they are required to comply with the PCA and WaterMark but building practitioners do not and will import containers of non-compliant product and then expect plumbers to install it.
- Increased awareness of WaterMark requirements for building practitioners (and government procurement agencies that have similar expectations of plumbers) is required.

Industry Interviews

ISSUES	COMMENTS
WATERMARK ISSUES	
General Issues	
Lack of awareness of the WMCS and plumbing regulatory framework	The perception of the industry is that the general public is largely unaware of the WMCS. The plumbers are generally aware of the WMCS but not the regulatory framework. The referenced standards are much better known than the PCA. The manufacturers/suppliers are the most informed group and the industry relies on them to supply the appropriate products.
NON WATERMARK ISSUES	
Concerns about non-WaterMark products	Most firms will not use Non-WaterMarked products because of the potential consequences of failure. Most firms will install non-Watermark products if requested to do so but will not accept responsibilities if problems arise.
Concerns about the level of inspection provided by the plumbing regulatory authorities	It appears that only 5% to 15% of the plumbing works are inspected. The amount and method of inspection vary with States and Territories.
On the Water Efficiency Labelling and Standards Scheme (WELS)	WELS is better known than WMCS because there was more publicity for it. WELS point of sale legislation is recognised as a better method for control. Many are also in favour of combining the two schemes when appropriate.
Clearer and more equitable share of responsibility between the parties	Current regulation puts the responsibility at the point of installation. It is felt that too much responsibility/control is placed on the plumbers. Designers of the system and suppliers should also have their responsibility defined.

Appendix D – Linkages between the WaterMark and WELS Programs – Executive Summary

The ABCB engaged George Wilkenfeld and Associates Pty Ltd to undertake the examination of possible linkages between the WELS and WaterMark schemes. The **Executive Summary** of this 2014 report is provided as an extract below.

Executive Summary

Background

The WaterMark Certification Scheme (WMCS) is a system of risk-assessment, testing and certification of plumbing products and materials, to verify that they meet the requirements of the Plumbing Code of Australia. The Scheme is currently operated by the Australian Building Codes Board (ABCB). The obligation to install only products, materials and systems that have been properly assessed (or exempted) under the WMCS falls on plumbers and installers, as a condition of their licensing under State and Territory law. The WMCS places no direct obligation on product suppliers.

The Water Efficiency Labelling and Standards (WELS) Scheme is established under the Commonwealth Water Efficiency Labelling and Standards Act 2005, supported by uniform state and territory legislation. Its objectives are to conserve water supplies by reducing consumption, through providing information to consumers about the water efficiency of products and by promoting the adoption of water efficient products and technologies. The products currently covered by WELS fall into two groups -

- Plumbing products, which are also covered by the WaterMark scheme: toilets, urinals, taps, showers and flow controllers.*
- Water-using electrical appliance: clothes washers, dishwashers and combined clothes washer-dryers. These are outside the scope of WaterMark.*

The WELS Act places obligations on suppliers to test and register these products and to ensure that they are correctly labelled in advertisements and at the point of supply. Toilets and clothes washers are also subject to minimum water efficiency standards (WES).

The ABCB is currently reviewing the WaterMark scheme. One of the Terms of Reference for the review is Identification of any linkages between WaterMark and the WELS scheme. This report covers that aspect of the WMCS review, and addresses the following questions:

- the objectives and scope of each scheme, and their compatibility;*
- their regulatory frameworks and impediments to greater linkage;*
- the specific aspects, if any, that could be linked, and how;*
- the benefits of such linkage, and to whom they would accrue;*
- whether there is merit in transferring responsibility for WELS registration, enforcement and communication for plumbing products to the WM administrator;*

- *how could regulatory differences could be overcome to achieve linkages;*
- *how fees and charges could be distributed between the two schemes, given their differing expectations regarding cost recoverability;*
- *the recommendations in the 2010 review of the WELS scheme, and relevant lessons learned that could inform the future direction of WaterMark.*

This project was undertaken over a relatively short period. It relied on documents supplied by the ABCB, additional documents identified by the author, meetings with officials of the ABCB, the Department of Industry and the WELS team in the Department of Environment and a limited number of interviews with stakeholders nominated by ABCB. The issues raised by stakeholders were similar to those identified by ABCB during its own extensive consultations on the WM scheme during 2013.

Conclusions

The objectives the WaterMark Certification Scheme and the Water Efficiency Labelling and Standards scheme are compatible, but they are not interchangeable. The WMCS scheme cannot meet the objectives of the WELS scheme, nor vice versa. At best, the schemes can support each other to a limited extent, as WELS has done by making WM certification a condition of registration for those plumbing products covered by both schemes.

The relationship between the two schemes is analogous to that between electrical product safety regulations and the appliance energy efficiency program. All electrical products must meet electrical safety standards, because every item represents a potential safety hazard. However, only a relatively small group of products is subject to energy labelling and minimum energy performance standards (MEPS), because they account for a high share of energy use, and their technology and market structures mean that product efficiency is likely to be influenced by these measures.

The most obvious overlap between the WMCS and WELS is that a particular group of plumbing products is covered by both schemes, and therefore the suppliers of those products come into contact with both schemes. In almost every other respect, the schemes are significantly different with regard to regulatory structure, mode of operation and target groups.

The WELS scheme was established following a rigorous impact assessment and cost-benefit analysis of alternative policy options. By contrast the WMCS addresses a problem which, though real, has not been quantified, and for which alternative strategies have not been proposed or assessed. If the objective of the WMCS is to ensure that only products that are risk-assessed should be connected to the mains water supply, then alternative strategies may be more effective.

The objectives and structures of the two schemes are so different there is little merit in transferring responsibility for WELS registration, enforcement and communication for plumbing products to the WaterMark Administrator.

Nor is it feasible to address water-efficiency solely through the WMCS. There is a continuing need for a scheme that can achieve both minimum WES and communicate comparative water-efficiency in an integrated way. Only WELS is capable of doing this.

In the absence of a clear, unified regulatory structure for the WM scheme – possibly on a similar basis to WELS – it is difficult to envisage formal linkages. However, that should not preclude administrative or functional linkages where mutually beneficial:

- *Linkage Level 1 – development of a joint registration/database portal;*
- *Linkage Level 2 – greater integration of test standards and laboratory requirements, and co-operation on monitoring and compliance issues – for example, WELS inspections of plumbing product suppliers could note which products are marked with or lacking the WM symbol;*
- *Linkage Level 3 – in the longer term, if WMCS were established under uniform national legislation, product suppliers could be made responsible for the WM status of products in the same way as they are responsible for the WELS status of products. If this were achieved, then registration, testing, monitoring and compliance functions could be formally linked. Alternatively, if the WELS Act were amended to cover the public health and safety aspects of plumbing products as well as their water-efficiency, it may be possible in the long term to unify the two schemes under the WELS Regulator. A change of this magnitude would require the agreement of many stakeholders in government and industry, as well as a Regulation Impact Assessment which would subject the WM scheme to formal cost-benefit analysis.*

At present the two schemes have different, and incompatible ways of raising revenue. The ABCB receives annual payments and royalties from CABs, whereas WELS receives revenue directly from registration fees. The linkages between revenues and cost-recovery for the ABCB are indirect and unpredictable, whereas for WELS they are more direct and predictable. These differences constitute a more significant impediment to the linkage of fees and charges than any differences in cost-recovery targets (currently 100% for WMCS and 80% for WELS).

While it may be possible to reduce combined operating costs and increase effectiveness through greater linkage, for the time being ABCB and WELS should continue to collect revenues and manage their separate costs and charges. Indeed, given that each scheme covers a wider range of products than the ones they have in common, it would be difficult to establish an equitable basis for the distribution of fixed costs, variable costs and income.

With regard to the 2010 review of the WELS scheme, there is little of direct relevance to WaterMark. The recommendations of greatest potential relevance - to merge the administrative functions of WELS with the WaterMark scheme (for plumbing products) and the Equipment Energy Efficiency (E3) Program (for appliances) - were rejected by government, and have not been acted on. The recommendations that were accepted have been implemented largely through amendment to the Commonwealth WELS Act 2005 and its related Fees Act and Determinations. As the WMCS has a different regulatory basis, changes of this kind would be more difficult to achieve.