CP13049 - 11 April 2013

PLUMBING PRODUCTS INDUSTRY

Committee Secretary
Senate Standing Committees' on Environment and Communications
PO Box 6100
Parliament House
CANBERRA ACT 2600

Re: Water Efficiency Labelling and Standards (Registration Fees) Bill 20134 and Water Efficiency Labelling and Standards Amendment (Registration Fees) Bill Provisions

PPI Group is an organisation formed by companies coming together to achieve what they cannot achieve alone, who have come together to represent and promote the industry along with the wellbeing of the companies.

Like all trade associations and employer organisations, PPI Group exists to serve its members and PPI Group acts as the industry's voice in dealing with governments at all levels and other industry groups. PPI Group is the industry association that is exclusively dedicated to the plumbing products industry.

The WELS Scheme was established under the Water Efficiency Labelling Standards Act 2005. This joint initiative of the Australian, State and Territory Governments was to focus on water efficiency performance of plumbing products per se. Industry is and has long been an active supporter of the WELS scheme. Industry support was delivered on the understanding that the prime principle underpinning the WELS scheme was the prerequisite for compliance with the requirements of both WaterMark and the relevant Australian Standard, and, after much debate and representation, WaterMark was finally required as a requisite for WELS registration in 2011.

PPI Group is concerned that the current Bills allow the Minister to set the cost recovery % in the future without reference to either Parliament or Industry. The Explanatory Memorandum indicates the current intended position is 80%, but there are no safeguards to require agreement before changing this position.

We attach a copy of our Submission relating to the latest round of changes in the WELS scheme for your background information and this details a number

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of our concerns relating to changes being imposed on industry without the WELS personnel being cognisant of the impact of the changes or understanding the industry with enough depth to see implications which would arise from their independent decisions.

PPI Group would be able to speak to this submission if required

Carmel M Coate
Executive Director

Australian Government

Department of Sustainability, Environment, Water, Population and Communities

COVERSHEET FOR SUBMISSIONS

WATER EFFICIENCY LABELLING AND STANDARDS (WELS) SCHEME – Consultation paper

This completed form must be included with your submission. If completing by hand, please ensure that your writing is clear and legible.

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Individual/group/organisation name for publication on website	**PPI Group**
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We need to collect your contact details should further information or clarification be required on your submission. Contents of your submission may be included in subsequent publications. Please provide at least one contact address. If you are making a submission for a group or organisation, please provide information for one primary contact member.	
Title	**Ms**
First Name	**Carmel**
Surname	**Coate**
Postal Address	**PPI Group** **PO Box 2466** **WERRIBEE Vic 3030**
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CP12006 – 15 March 2012

PLUMBING PRODUCTS INDUSTRY

Mr Dane Roberts
Water Efficiency Labelling and Standards Branch
Department of Sustainability, Environment, Water, Population and Communities
GPO Box 787
CANBERRA ACT 2601

Submission
WATER EFFICIENCY LABELLING AND STANDARDS (WELS) SCHEME
Consultation paper

PPI Group is an organisation formed by companies coming together to achieve what they cannot achieve alone, who have come together to represent and promote the industry along with the wellbeing of the companies.

Like all trade associations and employer organisations, PPI Group exists to serve its members and PPI Group acts as the industry's voice in dealing with governments at all levels and other industry groups. PPI Group is the industry association that is exclusively dedicated to the plumbing products industry.

The WELS Scheme was established under the Water Efficiency Labelling Standards Act 2005. This joint initiative of the Australian, State and Territory Governments was to focus on water efficiency performance of plumbing products per se. It was never intended that the scheme would cover anything other than water efficiency; it would certainly not address any aspects of product quality or public health and safety requirements.

Industry is and has long been an active supporter of the WELS scheme. Industry support was delivered on the understanding that the prime principle underpinning the WELS scheme was the prerequisite for compliance with the requirements of both WaterMark and the relevant Australian Standard, and, after much debate and representation, WaterMark was finally required as a requisite for WELS registration in 2011.

This joint initiative has been well used by the Australian, State and Territory Governments to build water saving initiatives throughout the country and, indeed, it may well be argued that they are the major users of WELS.

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The WELS website states:

"When WELS began in 2005, projections were made on the reduction in the demand for water and energy to the year 2021. Since then, a more recent study has been completed (in 2008) which shows even greater savings than the 2005 projections. By 2021, Australians could save more than one billion dollars through reduced water and energy bills by simply choosing more efficient products.

By 2021 it is estimated that using water efficient products will help to:

- *reduce domestic water use by more than 100,000 megalitres each year;*
- *save more than 800,000 megalitres (more water than Sydney Harbour); and*
- *reduce total greenhouse gas output by 400,000 tonnes each year - equivalent to taking 90,000 cars off the road each year.*

Over one third of the water savings will come from more efficient showers, about 34 per cent from washing machines and 23 per cent from toilets and urinals."

On this information we contend that taps therefor deliver less than 10% water savings, while seemingly through the proposals contained in the Discussion Paper may be seen to be required to pay for an inequitable percentage of the WELS scheme.

PPI Group recognises the requirement of users pay. However, the determination that Industry is the only user is a gross misstatement of the real users: Australian, State and Territory Governments, Water Authorities, Industry and the Community. PPI Group contends that the 80% Industry / 20 % Government ratio should be reversed. The Australian, State and Territory Governments has used the scheme, very wisely, to assist in water efficiency programmes, encouraging the community to be water wise.

Industry continues to express strong support for WELS and certainly expressed ongoing support to the independent reviewer in 2010. However if industry had been asked would the support of the scheme continue if cost is participation were to increase anywhere from 200% to 5000% without any surety of cost of participation or clarity on definition of a model our response would have been somewhat different.

While WELS is perceived by industry as a scheme of value, that value cannot be unlimited. For a participant to move from paying $10,000 to a possible

$1.2 million, or $1500 over 5 years to $8750 per annum is totally unacceptable and the decision of the WELS administrators that:

> *"To commence the scheme it is proposed that a model would be* ***what is presently registered in the database as a model****. This assumption would be used to charge a registration fee based on the number of models registered in the scheme at its commencement"*

gives no comfort, and does not provide to industry any ability to determine how much participation will actually cost.

The options, provided in the consultation paper are all determined by a decision of the WELS administrators of what they perceive to be a model. No business can agree to participate in the scheme which basically gives the administrators a blank cheque.

The "special edition of InkWELS February 2012" reported the obvious support from industry for a flat fee arrangement where the number of participants is divided into the $1.48 million, and that is the licence fee for participation in WELS. This is an option that PPI Group could support. However, the tiered arrangement referred to in InkWELS then moves on to ensure complexity is built in and again relies on administrators determining what, in their mind, constitutes a "product", and we are delivered back to the model definition and this again provides for a greater administrative burden which is not supported by PPI Group.

While PPI Group accepts the current administrators seek to raise $1.48 million PPI group questions how these major increases in costs can be imposed without the preparation of a regulatory impact statement as required by COAG Best Practice:

"Regulation refers to the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community, as well as to those government voluntary codes and advisory instruments for which there is a reasonable expectation of widespread compliance.

The principles of good regulatory practice and regulatory assessment requirements outlined in the Guide apply to decisions of COAG, Ministerial Councils and intergovernmental standard-setting bodies, however they are constituted. This includes bodies established by statute, or administratively by government, to deal with national regulatory problems.

The principles and assessment requirements apply to agreements or decisions to be given effect, whether at the Commonwealth or State/Territory level, or both, through principal and delegated legislation, administrative directions or other measures which, when implemented, would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done."

Principles of Best Practice Regulation

COAG has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. *establishing a case for action before addressing a problem;*
2. *a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;*
3. *adopting the option that generates the greatest net benefit for the community;*
4. *in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:-*
   a. *the benefits of the restrictions to the community as a whole outweigh the costs, and*
   b. *the objectives of the regulation can only be achieved by restricting competition;*
5. *providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;*
6. *ensuring that regulation remains relevant and effective over time;*
7. *consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and*
8. *government action should be effective and proportional to*

PPI Group contends that the cost about to be imposed on industry does not generate the greatest net benefit for the community (3) nor do the benefits of the restriction to the community as a whole outweigh the costs (4)

On the issue of allowing any person to register product PPI group opposes this unconditionally. For the Australian government to allow any organisation who is not the holder of IP, or licensed to act on the half of an owner t,o register product is a serious breach of IP and contractual relationships

between parties in Australia. Given that the WELS scheme requires provision of technical data and WaterMark licence details this proposed amendment complicates an already overcomplicated scheme.

If the manufacturer retains all the liability of warranty and service then no other organisation should be legally able to register their product without their written consent.

The suggestion that "new requirements may be introduced to notify downstream supplies when the registration status of the product changes and providing registration documentation at each step of the supply chain" (page 22) is seemingly a very simple statement.

The administration and cost requirement of this “simple” requirement has not been explored and no information has been provided in the discussion paper on what would serve as notification. The complexity of this proposed requirement is not understood within WELS. It would require the rewriting of complex stock management systems and invoicing frameworks. It could see customers receiving advice on products they no longer have in stock; it could require manufacturers using manual stock systems to put in place arrangements to ensure their ability to be able to comply at a cost more than their participation in in WELS.

InkWELS Feb 2012 asked for feedback on:

- Is the definition of a model as 'what is in the database now as a model' workable for you?

  No, because WELS administration has difficulty articulating a definition of a model and Industry cannot provide an open book arrangement, open for interpretation, without definitions against which products/models can be measured.

- Do you accept the proposal that further clarity regarding the definition of a model be tasked to the Standards Australia committee WS-032 during the first year of the new arrangements?

  PPI Group advises that the current definitions within AS6400 meet current needs and should be accepted by WELS administration.

- Do you support a tiered registration fee, where an annual registration fee is charged and linked only to the number of models registered?

  No, this increases complexity into what could and should be a simple license fee for participation which is paid annually.

- If you support such a fee arrangement, do you support pro-rata crediting of existing fees, and the consequent higher fees that result?

  PPI Group believes that if any funding model other than the simple 1 annual license fee, based on number of participants divided in $1.48 million, then the new fee structure should not apply under the contractual obligation WELS entered into when products were registered and reregistered for a 5 year period until the end of that 5 year period.

PPI Group is disturbed at many of the proposals contained in the Discussion Paper and urges that further thought, debate and discussion occur before any changes are implemented.

Question 3 (page 14):

If your preference is for option 3 (product sub-categories), are the proposed sub-categories in Table 4.3 on page 12 appropriate? Can you suggest how the sub-categories can be made more relevant?

☐ No Comment

Comment:

See Comments in submission on Options put forward

Question 4 (page 14):

Do all products that you sell have a unique code? For businesses that do not employ a unique code for their products, does this create difficulties? In your opinion, what is the most effective way to separately identify individual models/variants registered under the WELS scheme?

☐ No Comment

Comment:

WELS does not understand the various stock coding system within the plumbing products industry nor do they understand the operation of models. Each manufacturer has its own stock coding system for stock.

Question 5 (page 15):

Is there a need for sets of minor products under the new arrangements? Why/why not?

☐ No Comment

Comment:

PPI group urges the retention of minor products if the new arrangements are put in place.

Question 6 (page 15):

Do you supply sets of minor products? If so, what percentage of your business do these products constitute?

☐ No Comment

Comment:

Not applicable

Question 7 (page 15):

Are the criteria for sets of minor products appropriate? If no, please provide reasons.

☐ No Comment

Comment:

Question 8 (page 16):

Do you have a preference for a particular renewal system - fixed (e.g. annual) or flexible (e.g. 1, 2 and 3 years)? Why?

☐ No Comment

Comment:

An annual registration seems to make for a higher level of administration within the WELS scheme which effectively would equate to a higher administration cost.

Question 9 (page 17):

For transitioning to the new fee arrangements, do you prefer that registrations commence from the date of inception of the new scheme, or an option that staggers commencement of new registrations?

☐ No Comment

Comment:

If the new scheme is imposed on industry industry then registrations should occur on anniversary of registrations i.e. staggered.

Question 10 (page 18):

Which of the two options for treatment of existing fees at the commencement of the new scheme do you consider the most appropriate and/or administratively straightforward for you? Why?

a) Existing fees are pro-rata credited and the total amount returned is collected through higher fees, or

b) Existing fees are not credited to individual registrants, but their retention used to lower fees.

☐ No Comment

Comment:

PPI Group suggests no participant would willingly cede any outstanding funds to WELS

Question 11 (page 20):

What is your preference for grandfathering provisions, and why? Should grandfathering be indefinite, with the Minister able to specify a date of 'no further supply', or should there be a specified period of grandfathering after the WELS standard is changed?

☐ No Comment

Comment:

PPI Group supports indefinite grandfathering that the Minister being able to specify a date of "no further supply"

Question 12 (page 20):

Should be removed from the WELS scheme or should registration of these products become mandatory? Please provide reasons for your answer.

□ No Comment

Comment:

Flow controllers should be removed from the WELS scheme until the scheme is more mature and returns to cost effectiveness

Chapter 5: Proposed changes to compliance and administration of the WELS scheme

Question 13 (page 22):

Is there anything else you would like to see for WELS compliance (e.g. new penalties or offences and different compliance responses)?

□ No Comment

Comment:

PPI Group is looking forward to seeing the civil penalties put in place so that WELS can start protecting the scheme and its participants effectively

Question 14 (page 22):

What do you think of the current level and focus of WELS compliance activities?

□ No Comment

Comment:

PPI Group is not very aware of WELS compliance activities so cannot comment on the current level and focus

Question 15 (page 23):

Do you agree with the requirement that all advertising for WELS products must have WELS information? If yes, why?

□ No Comment

Comment:

PPI Group supports the requirement for all advertising (brochures, Internet, electronic, advertisements) to provide full WELS information and we would support civil penalties being applied when WELS registration information is misused or used inappropriately.

Question 16 (page 23):
Is there another way to monitor the advertising requirement? If yes, how?

□ No Comment

Comment:

PPI Group believes WELS responding to advice from industry in a proactive manner is the most effective way for WELS to monitor advertising/promotional material.

Question 17 (page 24):
How do you access registration information about products (e.g. through the Gazette, through the public database or otherwise)?

□ No Comment

Comment:

WELS database

Question 18 (page 24):
Where would you like to access registration information about products? Why?

□ No Comment

Comment:

WELS database – integrity of government database

Chapter 6: Other proposed changes and further scheme development

Question 19 (page 25):
Do you support the ability of WELS inspectors to enter premises without paying a fee if there is one?

□ No Comment

Comment:

Yes

Question 20 (page 25):
Do you support more extended holding of evidentiary material? Why or why not?

□ No Comment

Comment:

No, the option already exists this to be extended by Magistrate

Question 21 (page 26):
How much detail of alleged breaches do you think should be publicised?

□ No Comment

Comment:

Company, breach and penalty

Question 22 (page 27):
Do you support follow-up check testing being at the cost of the registrant of the 'failed' product? Why or why not?

□ No Comment

Comment:

Yes. If the product is not as it was registered then the registrant must accept responsibility for this and payment for the check testing would be one of the penalties applied

Question 23 (page 27):

Do you have any concerns about any 'person' being able to apply for registration of a WELS product provided they can supply required test results, WaterMark certification etc? If yes, please outline your concerns.

□ No Comment

Comment:

Yes, the usurping of a manufacturer's IP should not be countenanced by an Australian government Department.

An appropriately licensed organisation with the written permission of the manufacturer and the appropriate technical data should be (and is currently considered to be) the manufacturer for the purposes of the legislation

Question 24 (page 27):

Do you think the WELS Regulator should have any specific functions? Why or why not?

□ No Comment

Comment:

Not at this time

Question 25 (page 28):

Do you have any concerns about information sharing between WELS and other government agencies? If yes, please provide details.

□ No Comment

Comment:

Question 26 (page 28):

Does the definition of 'supply' also need to cover any other aspects? If yes, please provide details?

□ No Comment

Comment:

PPI Group will provide comment when the definition of supply is advanced by WELS

Question 27 (page 28):

Have you experienced any issues with the current definition of 'supply'? If yes, in what instances.

□ No Comment

Comment:

Question 28 (page 29):

Do you consider that WELS should be more closely aligned with WaterMark and/or the E3 energy rating scheme? Please provide justifications for your response.

□ No Comment

Comment:

PPI Group would support and alignment of the WaterMark scheme with the WELS scheme at a point in the future when both schemes are operating efficiently and effectively.

The white goods section of the WELS scheme would be more appropriately aligned with E3

Question 29 (page 29):

Should the scheme be eventually split between plumbing and whitegoods products and if so, in what timeframe?

□ No Comment

Comment:

See response above – PPI group would not see this alignment occurring before 2 to 3 years of active operation of both WELS and WaterMark

Question 30 (page 29):

Do you see value in a single 'sustainability' label? Why? Who would derive the most benefit from such a label?

□ No Comment

Comment:

Not in the near future

uestion 31 (page 30):

Please provide any other comments or suggestions that you would like to make about improving the WELS scheme.

□ No Comment

Comment:

See submission correspondence