



ASIA-PACIFIC
LEGAL METROLOGY FORUM

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Economy Report - 2017

Australia

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SECTION 1 – Organisation and structure for metrology

Organisation Structure

NMI Australia

The National Measurement Institute (NMI), a division within the Department of Industry, Innovation and Science is Australia's peak measurement body responsible for trade measurement and biological, chemical, legal and physical metrology. Our vision is to provide measurement policy, science and regulation that underpins the economy and well-being of Australia. NMI is currently focusing on greater engagement with and increasing services to the energy, health, environment and food sectors.

- **Update on New CEO - Retirement of Dr Peter Fisk**

NMI's previous CEO and Chief Metrologist, Dr Peter Fisk, retired on 29 September 2017.

Jane Coram commenced duty as the NMI Chief Executive Officer on 3 October 2017. Previously Jane was the Chief Scientist at Geoscience Australia which is Australia's pre-eminent public sector geoscience organisation and the nation's trusted advisor on the geology and geography of Australia.

Dr Richard Bruce Warrington has been appointed as NMI's Chief Metrologist and will continue as its deputy CEO.

Legal Metrology Branch

NMI's Legal Metrology Branch administers Australia's trade measurement infrastructure. Its policy aims are to provide an efficient and effective national trade measurement system across Australia for the community, business and government; and to provide confidence in all aspects of trade measurement through a unified, national system. The Legal Metrology Branch's objectives are to maintain a high level of general awareness and transparency in trade measurement transactions; to ensure an effective compliance framework; and to continually improve trade measurement.

The Legal Metrology Branch consists of five sections – Policy and Pattern Approval and Licensing; Governance and Business Performance; Legislative Review; Training and Technology Transfer; and Trade Measurement Services. Training and Technology Transfer provides services across all branches of NMI.

Regulatory Reform Agenda

To support the government's Regulatory Reform Agenda all new policies and programs including amendments to existing regulations must be costed. Offsets must be identified for any increase in regulatory burden. The Australian Government Guide to Regulation sets out ten principles for Australian Government policy makers to consider before addressing a policy problem.

Regulator performance structure and reporting requirements

NMI annually self-assesses its performance against a set of Key Performance Indicators (KPI's) in the government's Regulator Performance Framework. The framework consists of six outcomes-based KPI's focused on reducing regulatory burden, communications, risk-based and proportionate approaches, efficient and coordinated monitoring, transparency and continuous improvement. NMI is required to review how it operates and the imposition it creates when administering regulation.

NMI publishes an annual report which is based on its self-assessment and is externally validated by stakeholders. The report identifies the extent to which NMI is achieving the KPIs in the Framework and supports NMI to recognise areas for improvement.

Legislative Frameworks

Update on Legislative Review

NMI is conducting a thematic review of the entire national measurement legislative framework, including holistic and comprehensive analysis of all legislative instruments made under the *National Measurement Act 1960*.

The review will develop options for a more efficient measurement framework consistent with the Australia's whole of government agenda of regulatory reform and business simplification. Objectives of the review include:

- Ensuring it is fit-for-purpose and as future-proof as possible which will better accommodate innovation.
- Reducing prescription in legislation, thereby reducing red tape and business regulatory burden.
- Movement toward principles-based legislation that improves the quality of regulation and simplifies the regulatory framework.
- Reducing barriers to trade by minimising regulatory intervention, thus boosting productivity.

The review will consult across the whole of government and external stakeholders and include international comparison to develop options and make recommendations in relation to:

- minimum effective regulation models that could lessen government intervention;
- using principles-based legislation to minimise regulatory burden on business;
- pathways to support a transparent, proportionate, flexible and risk-based approach to regulation;
- utilising appropriate third parties to support or implement the framework;
- removing unwarranted regulatory barriers to market entry of new technologies, and other technical barriers to competition;
- mechanisms to support market innovation and changes in technology;
- ensuring that Australia's measurement legislation promotes confidence in Australia's measurement system; and
- adopting best practice national and international regulatory approaches.

The review has a 5 year horizon, with options for reform to be presented to the Australian Government for consideration in 2020, following extensive public and industry consultation.

The 5-year time-frame includes a transition period to educate stakeholders on the NMI Australia legislative changes.

The legislative review has identified 16 themes that run through Australia’s measurement legislation, including:

1. Objectives and structure
2. Regulatory scope
3. Traceability
4. Reference material and standards
5. Measuring instruments
6. Pattern approval
7. Verification
8. Legal metrology authorities
9. Servicing licensees
10. Transactions based on measurement
11. Packaged products
12. Shortfall
13. Weighbridges
14. Trade measurement inspectors
15. Enforcement and offences
16. Governance and administration

Issues will be addressed within and across these themes.

International arrangements and engagement

Australia was represented at the following international meetings and fora since the 2016 APLMF meeting:

- OIML TC 17/SC 7/p 3 – Revision of OIML R 126 Evidential Breath Analysers, 8 – 9 February 2017, Paris, France.
- OIML Certification System (OIML-CS) Provisional Management Committee (prMC) Meeting, 14 -16 February 2017, Berlin, Germany.
- 52nd CIML Meeting, Week of 9 October, 2017, Cartagena, Colombia.

Australia has and will continue to be actively engaged in the development of the OIML-CS, with representation on the Management Committee and Review Committee. Australia intends to participate in the OIML-CS on commencement in January, 2018. Australia will become a Utilizer and will apply to become an Issuing Authority for a range of instrument categories.

SECTION 2 – Key activities of 2016/17

Working with industry

Public consultations

In the period November, 2016 to October, 2017 the following public consultations were undertaken:

- Metrological regulation for load cells: comments sought on OIML R60
- Review of NMI Requirements for the measurement of LPG density
- Compressed natural gas (CNG) and hydrogen dispensers: Comment sought on OIML R 139
- Cost Recovery Models for Regulatory Functions
- Review of the policy for the acceptance of pattern approval test results

Training

In 2016-17 the Training and Technology Transfer Section continued to offer both online and classroom-based training courses, with 70 participants attending 21 face-to-face legal metrology courses.

Protecting consumers

Review of Compliance Policy

NMI has published a new National Compliance Policy. The fundamental principle driving the policy is to minimise harm without creating unnecessary compliance costs or burdens for business. This approach incorporates three compliance principles:

- Proportionality – any regulatory response is proportionate to the impact of any actual or potential harm.
- Consistency – a consistent approach is taken when interpreting, applying and enforcing national trade measurement legislation.
- Transparency – NMI is accessible, provides clear guidance on all aspects of our legislation and is open about our policies, processes and, where permitted, its decisions.

These compliance principles are applied to implement program-driven compliance activities to:

- Plan and implement national targeted inspection programs for industry sectors that have a higher risk of harm resulting from non-compliant activity
- Undertake pilot programs to assess the level of risk associated with non-compliance in specific or emerging industry sectors and then determine whether a national targeted program is required
- A base level of compliance monitoring through random audits which provide marketplace visibility.

Regulating to prevent harm rather than measurement accuracy

NMI is developing and implementing a regulatory framework primarily focused on minimising harm associated with the consequence and likelihood of non-compliant activity. While measurement accuracy underpins the metrological framework it is no longer the primary driver in our activities. Factors to evaluate likely harm include:

- impact on confidence in the measurement system.

- extent of financial detriment to consumers or industry.
- impact on maintaining a level playing field for business competition.
- ability of consumers to make informed purchasing decisions.
- impact on innovation, regulatory burden and international harmonisation

Our risk based approach is used when:

- prioritising the development and maintenance of legal metrology infrastructure.
- targeting compliance monitoring activities.
- determining the appropriate and proportionate regulatory response where non-compliance is identified.
- accepting pattern approval test results from domestic and international laboratories.

2017-2018 Compliance Programs

National Targeted Programs

From an analysis of compliance history, together with consideration of the number of businesses and value of measurement transactions, NMI determines the level of risk associated with non-compliance across industry sectors. Based on this analysis, the following industries will be the focus of national targeted inspection activities in 2017–2018:

- Meat, Fish and Poultry Retailing
- Supermarket and Grocery Stores (Turnover < \$2m)

Waste Management

Weight and volume based charging is increasingly prevalent in the waste management and recycling sector. Some industry participants have raised concerns with NMI about levels of compliance with trade measurement legislation, particularly in relation to use of approved and verified measuring instruments. NMI will engage with industry stakeholders and government departments to assess the level of risk within the industry and the need for any ongoing commitment of resources.

Data Collection and Monitoring Programs

- Community Savings
To underpin the analysis used to identify national and region specific targeted risk programs for 2018–2019, NMI will capture data on likely financial loss suffered by customers in trade measurement transactions across a broad range of industry types.
- Compliance Confidence
In the third quarter of 2017–2018, NMI will commence a program to target a selection of traders and industry groups found to be non-compliant in previous years to evaluate their ongoing business practices. The results of these inspections will be used to determine the level of future engagement directed towards these industries to address any systemic failure to commit to long term compliance.
- Ongoing Programs
 - Outer Regional and Remote
As part of our commitment to ensuring that industry and consumers in remote locations are not unfairly disadvantaged directly or indirectly primarily as a consequence of their locality, NMI will conduct further auditing activities in remote

and indigenous communities to increase awareness of the role of trade measurement and improve compliance with trade measurement legislation.

Weighbridge Audits

As weighbridges are fundamentally important trade measuring instruments in industries that contribute significantly to Australian GDP, such as mining, agriculture, livestock and transport, NMI will continue to deliver a program of weighbridge inspections across metropolitan and regional areas.

Servicing Licensee and Verifier Audits

To support the businesses that rely on the instrument verification services provided by servicing licensees, NMI will conduct quality management audits of servicing licensees and audit measuring instruments verified by employees of servicing licensees (verifier instrument audits) to ensure that verification is being undertaken correctly.

Rapid Response

When required, inspection activity will be initiated immediately in response to Government priorities and stakeholder intelligence where significant market failure is identified and not covered by other compliance programs.

SECTION 3 – Future focus

New initiatives planned (next 1-2 years)

As reported above, NMI is conducting a thematic review of the entire national measurement legislative framework, including holistic and comprehensive analysis of all legislative instruments made under the *National Measurement Act 1960*.

The review will develop options for a more efficient measurement framework that is consistent with the Australia's whole of government agenda of regulatory reform and business simplification.

NMI is reviewing our current policy regarding the acceptance of pattern approval test results. The aim of the review is to consider the development of a more risk-based approach to the acceptance of test results and this will be done in consultation with Australian industry.

Emerging issues – challenges and opportunities

Shift to principles-based legislation

The Australian Government is committed to reducing the amount of prescription in regulations and to have more principles-based legislation. By having a clear articulation of the underpinning policies for legal metrology, innovative technologies could be accommodated in the legal metrology system more easily, brought to market sooner and not be delayed due to prescriptive arrangements. The challenge will be to maintain appropriate levels of business and consumer confidence in the legal metrology system.