



Australian Government
Department of Industry,
Innovation and Science

**National
Measurement
Institute**

Regulator Performance Framework Self-Assessment Report

National Measurement Institute 2015-16

www.measurement.gov.au

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1. Certification by the Accountable Authority

“The regulator’s Accountable Authority under the PGPA Act, if applicable, **must certify the self-assessment report and provide it to the MAC or other stakeholder consultation mechanism approved by the responsible Minister**”.

The Secretary of the Department of Industry, Innovation and Science is the Accountable Authority for the following 6 regulators:

Regulator	Stakeholder consultation mechanism
Anti-Dumping Commission (ADC)	International Trade Remedies Forum
Australian Industry Participation (AIP) Authority	Growth Centres Advisory Committee
Commercial Building Disclosure (CBD) Program	Commercial Building Disclosure Forum
Greenhouse and Energy Minimum Standards (GEMS) Regulator	Equipment Energy Efficiency (E3) Review Committee
National Measurement Institute (NMI)	Consumer and Industry Liaison Committee (CILC)
National Offshore Petroleum Titles Administrator (NOPTA)	Growth Centres Advisory Committee

2. Executive Summary

Following establishment of trade measurement as a Commonwealth regulatory function in 2010, the National Measurement Institute (NMI) has undertaken a significant program of work to develop and implement the systems, processes and resources required to deliver a nationally harmonised legal metrology framework.

In general NMI performs well against the KPIs of the regulator performance framework. As outlined below, NMI:

- applies a proportionate and risk-based approach to compliance and enforcement actions (KPI 3);
- involves stakeholders in development and improvement of regulatory frameworks (KPIs 1 & 4);
- is open and transparent in its dealings and clear in its communication with regulated entities (KPIs 2 & 5); and
- takes a pro-active approach to continuously improving regulatory performance (KPIs 2, 3 & 6).

An excellent example from 2015-16 of NMI taking a pro-active approach and working with stakeholders to improve regulation is the adoption, following formal consultation, of updated international standards for water meters. NMI is responsible for the pattern, or type, approval of measuring instruments used for trade, including hot and cold water meters. In order to be used for trade or billing purposes, meters must be approved by NMI. The adoption of the updated international standard from the International Organisation of Legal Metrology, OIML R 49, harmonises Australia's water meter regulations with international best practice. Potential benefits include fairer billing and a reduction in water consumption.

In 2015-16 an external review of NMI's legal metrology functions was commissioned to support continuous improvement of regulatory administration. The review report noted:

"NMI's maintenance of the Australian measurement framework is respected by other jurisdictions internationally and feedback from industry and consumer groups has not identified any major concerns with the current operation of the system".

However, as outlined in Section 5, the external review did identify areas for NMI to improve its regulatory performance including:

- strengthening the overarching governance arrangements for legal metrology (KPIs 5 & 6);
- confirming the policy objectives for legal metrology and reviewing its legislative instruments (KPIs 5 & 6); and
- enhancing data collection and analysis to support the evidence base for our risk-based approach to compliance and enforcement (KPI 3).

NMI and the Department of Industry, Innovation and Science are working towards, and have made significant progress on, addressing the areas identified for improvement, including:

- establishment of an NMI Steering Committee within the Department;
- the Secretary of the Department issuing a Statement of Expectations for NMI and work within NMI to develop a complementary Statement of Intent;
- commencement of a legal metrology policy review to clearly and consistently articulate regulatory aims and objectives and provide the principles to inform a subsequent legislative review; and
- development and implementation of a new data management system to assist in enhancing the alignment of regulatory activities with areas of identified risk.

3. Regulation of Legal Metrology by NMI

Legal metrology has its historical origins in the need to ensure fair trade but is now considered to comprise all measurements carried out for any legal purpose, including the supporting technical and regulatory infrastructure.

Metrology standards and the traceability of measurement to those standards provide the basis for successful trade and commerce by supporting fair and open competition. They also help drive the continuous development of science, technology and industrial production. They are the foundation for all testing and measurements, including those associated with disease diagnosis and health care, food safety, forensic science, environmental monitoring, work health and safety, optimisation of production, and consumer information and protection.

The economic impact of activities covered by legal metrology is significant. Studies in Australia, the USA and Canada have estimated the total value of trade transactions involving measurement (including packaged goods and utility metering) as accounting for at least 50% of Gross National Income (GNI). Of this amount, around a quarter is accounted for by retail transactions with the remaining three quarters being business to business transactions. Based on these estimates, the total value of trade transactions involving measurement in Australia in 2014-15 was more than \$750 billion.

The National Measurement Institute (NMI), a division of the Australian Government Department of Industry, Innovation and Science, administers the *National Measurement Act 1960* (the Act).

The Act establishes a national system of units and standards of measurement and provides for their uniform use throughout Australia to ensure traceability of measurement. The Act also regulates transactions involving measurement, including sales of measured quantities and packaged goods, and sets out specific requirements for measuring instruments used for trade.

A measuring instrument is being used for trade if it is used in determining the consideration in respect of a transaction or in determining the amount of a tax. In Australia, all measuring instruments used for trade must be pattern approved and verified.

Pattern (or type) approval confirms that a measuring instrument's design meets relevant standards and performs as intended over a range of environmental and usage conditions.

Verification is the testing of measuring instruments to ensure that they operate in accordance with pattern approval requirements and are calibrated.

Examination of trade measuring instruments and issuing certificates for pattern approval is undertaken by NMI, except in the case of electricity and water meters where examinations are undertaken by NMI appointed Approving Authorities.

Verification of trade measuring instruments is usually carried out by NMI appointed organisations, known as Servicing Licensees or Utility Meter Verifiers, and is usually undertaken in accordance with National Instrument Test Procedures (NITPs) determined by NMI.

To ensure traceability of reference standards used for verification of trade measuring instruments, NMI appoints Verifying Authorities in areas such as length, mass, area, volume, density, and temperature.

Traceability is being able to demonstrate that a measurement result is related to a primary standard through a documented, unbroken chain of calibrations; a measurement cannot be relied upon as correct unless it is traceable

NMI also appoints Certifying Authorities to calibrate certain grain quality measuring instruments and to produce reference materials used in their calibration.

NMI employs Trade Measurement Inspectors who can visit a place of business to: check packaged goods for correct measurement; inspect and/or test measuring equipment; and review how measurements are made, to ensure compliance with the law.

4. The Regulator Performance Framework

The Commonwealth Government has developed the [Regulator Performance Framework](#)¹ to give business, the community and individuals confidence that regulators effectively and flexibly manage risk. Efficiently administered regulatory frameworks can improve the operation of businesses, markets and the economy, bring major benefits for individuals and lead to fewer resource requirements for regulators.

To achieve the Government's objectives, the Framework comprises, amongst other things:

- outcomes-based key performance indicators (KPIs) to articulate the Government's overarching expectations of regulator performance, namely:
 - regulators do not unnecessarily impede the efficient operation of regulated entities;
 - communication with regulated entities is clear, targeted and effective;
 - actions undertaken by regulators are proportionate to the risk being managed;
 - compliance and monitoring approaches are streamlined and coordinated;
 - regulators are open and transparent in their dealings with regulated entities; and
 - regulators actively contribute to the continuous improvement of regulatory frameworks.
- measures of good regulatory performance to be used by all regulators to assess their achievement of the KPIs, although these may be complemented with relevant output or activity-based evidence specific to the regulators' circumstances.

The Framework also includes a requirement for regulators to undertake an annual self-assessment against the KPIs of the Framework and publish a report on the outcomes of that self-assessment and any external reviews of their performance.

4.1 Implementing the Framework

This report has been prepared to assess achievements in 2015-16 against the measures of good regulatory performance for each of the KPIs. It has been reviewed and endorsed by NMI's stakeholder reference group, the Consumer and Industry Liaison Committee (CILC).

CILC also agreed the evidence metrics listed below to be used as part of this self-assessment report to measure performance against the KPIs of the Framework. These evidence metrics were subsequently endorsed by the Minister for Industry, Innovation & Science.

Because there is some duplication and repetition amongst the "measures of good regulatory performance" and "examples of output/activity-based evidence" published against each of the Framework's KPIs, each 'evidence metric' usually covers more than one KPI.

The report also includes additional information to demonstrate performance against each of the KPIs. Based on the experience of preparing this first self-assessment report against the KPIs of the Framework, NMI's evidence metrics will be reviewed over 2016-17 to identify whether any enhancements are required to improve reporting in future years.

This report also includes information on the results of an external review of the provision of legal metrology services by NMI, and work undertaken by NMI in response to the recommendations of that review.

¹ <https://www.cuttingredtape.gov.au/resources/rpf>

Evidence Metric	Applicable KPI
Percentage of trade measurement inspections that address areas identified as high-risk with regard to policy goals	KPI 1 KPI 3 KPI 4
Percentage of applications assessed and processed within agreed or published timeframes	KPI 1 KPI 2
Percentage of stakeholder feedback that is favourable (customer satisfaction)	KPI 2 KPI 5 KPI 6
Number of information sharing meetings with key stakeholders (effective communication)	KPI 2 KPI 5 KPI 6
Examples of improvements to how NMI conducts its regulatory role (continuous improvement)	KPI 6
Percentage of assessments or inspections that take account of risk profile (risk informed regulation)	KPI 3 KPI 4 KPI 5 KPI 6
Number of enforcements actions that do not involve a fine	KPI 3 KPI 4
Number of enforcements actions that involve at least a fine	KPI 3 KPI 4
Percentage of instances in which stakeholders are consulted on the development of regulations (transparent development of standards)	KPI 2 KPI 5 KPI 6

5. Independent Review

In 2015, an independent economic consulting firm was engaged by the Department of Industry, Innovation and Science to conduct a review of the provision of legal metrology services by NMI and provide advice on how legal metrology should best evolve to meet the needs of Australia's governments, businesses and consumers. Specifically, the Department asked the consultant to:

- assess the level and type of NMI's legal metrology activities in terms of efficiency, appropriateness and effectiveness;
- assess the degree of flexibility that NMI has in relation to undertaking trade measurement and other legal metrology activities, including identifying any areas where NMI is currently compelled or constrained in its actions and commenting on the implications of such compulsion or constraint;
- consider and provide comment on alternative delivery models including the potential for greater reliance on self-regulation and/or generic market regulation such as competition and consumer law; and
- examine the most appropriate location for NMI's legal metrology operations within Government.

The December 2015 report of the external review of NMI's legal metrology functions noted that:

NMI's maintenance of the Australian measurement framework is respected by other jurisdictions internationally and feedback from industry and consumer groups has not identified any major concerns with the current operation of the system.

However, the external review did identify areas for NMI and the Department to improve regulatory performance including:

- strengthening the overarching governance arrangements for legal metrology by: establishing a formal oversight committee within the Department; and establishing a Statement of Expectations for NMI's performance as regulator;
- confirming the policy objectives for legal metrology to clearly and consistently articulate regulatory aims and objectives;
- reviewing the legislative instruments for legal metrology with a view to simplifying the regulations and reducing the amount of prescription; and
- improving data collection and analysis to support the evidence base for an enhanced risk-based approach to compliance and enforcement.

NMI and the Department are working towards, and have made significant progress, on addressing the areas identified for improvement.

A Steering Committee has been established within the Department, chaired by the Head of Science and Commercialisation Policy Division and reporting to the Department's Executive Board, as a formal governance group to provide strategic oversight of NMI and, amongst other things, guidance to the Legal Metrology Branch in the development and implementation of its strategic plan, compliance and enforcement policy and approach to resource allocation.

In June 2016 the Secretary of the Department issued a Statement of Expectations for NMI which, amongst other things, confirms that NMI's legal metrology activities must be consistent with the Government's preferred approach for best-practice regulation, including:

- a) focusing on regulatory reform to reduce red tape and compliance costs for businesses and the community;
- b) moving towards more principles-based regulation that identifies the desired outcomes, rather than prescribing how to achieve them; and

- c) pursuing a risk-based approach to compliance obligations, engagement and enforcement, allowing for proportionate approaches suited to the size, nature, complexity and risk of regulated entities.

NMI is now developing a Statement of Intent in response to that Statement of Expectations and both documents will be published on the NMI website in 2016-17.

The capacity for data collection, analysis, management and reporting has been significantly enhanced through development and implementation in 2015-16 of a new data management system, the Trade Measurement Analysis System (TMARS) and the appointment of a data analyst.

NMI will be using the information generated from the new data management system as an evidence base to better align its inspection, compliance and monitoring activities and performance targets, with areas of identified risk.

In March 2016, NMI commenced a Legal Metrology Policy Review with a 6 month timeframe to facilitate discussion leading to the preparation of an overarching strategic policy statement which outlines the appropriate objectives and outcomes for legal metrology in Australia.

The strategic policy statement will provide a clear context to establish priorities, processes and boundaries for the delivery of legal metrology activities in Australia and provide the principles to inform a later legislative review.

The Policy Review timeframe has recently been extended to account for restrictions on consultation during the caretaker period prior to the 2016 Commonwealth elections.

The Legal Metrology Legislative Review will be a major undertaking over a number of years and will commence in 2016-17.

Other work to commence in 2016-17 in response to the recommendations of the independent review will include a review of NMI's trade measurement Compliance and Enforcement Policy.

6. KPI 1: Regulators do not unnecessarily impede the efficient operation of regulated entities

6.1 Summary of achievement

All applications for servicing licences and legal metrology authority appointments were assessed and processed within agreed timeframes.

After consultation with stakeholders, NMI adopted a number of new and updated international standards for measuring instruments.

NMI participated in development and revision of international standards for measuring instruments to ensure interests of Australian industry were appropriately represented.

To minimise costs for industry associated with business audits, market surveillance and enforcement activities were targeted using a risk-based model.

6.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 1 are:

1. Regulators demonstrate an understanding of the operating environment of the industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector.
2. Regulators take actions to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains.
3. Regulators implement continuous improvement strategies to reduce the costs of compliance for those they regulate.

6.3 NMI's approach

NMI develops and implements a risk-based annual trade measurement compliance plan for market surveillance and enforcement activities. Using a risk-based model to target regulatory activities such as business audits assists in ensuring that businesses assessed as low risk are not unduly burdened by any costs associated with those audits.

NMI has application processes for appointment as a legal metrology authority, and for licensing of servicing licensees and public weighbridge licensees. Agreed and published timeframes enables business to plan and reduces regulatory burden.

NMI has established a formal stakeholder consultation group to gather advice on the operating environment and current and emerging issues.

NMI also meets regularly with individual industry associations, companies and organisations to discuss developments in technology and business models and through such consultation develops regulatory strategies to ensure that costs of compliance can be minimised.

NMI participates in formal processes that develop international documentary standards for measuring instruments and adopts relevant international standards to support market efficiency and to ensure Australia's regulatory environment is harmonised with international best practise.

6.4 Results

Percentage of trade measurement inspections that address areas identified as high-risk with regard to policy goals

In 2015-16, 1,767 (23%) of the 7,588 initial trader audits were undertaken as part of high-risk targeted programs.

Percentage of applications assessed and processed within agreed or published timeframes

In 2015-16, NMI assessed and approved applications for establishing or renewing: 142 servicing licenses; and 106 public weighbridge licences. All (100%) were completed within the published timeframe of 28 days.

In 2015-16, NMI assessed and approved applications for establishing or renewing 17 Legal Metrology Authority appointments: 2 Certifying Authority; 10 Verifying Authority; 2 Approving Authority; and 3 Utility Meter Verifier. All (100%) were completed within the published timeframe of three months.

Formal stakeholder consultation mechanism

To assist with ensuring that NMI's trade measurement regulatory activities take proper account of the operating environment for business and minimise potential for unintended negative impacts of those regulatory activities, NMI established the CILC in 2010 comprised of representatives from industry associations and consumer groups. CILC meets twice yearly to:

- exchange views about trade and regulatory matters as they relate to trade measurement:
 - scope of metrological control of measuring instruments used for trade purposes;
 - pattern approval framework and service levels; and
 - trade measurement service levels and perception of compliance in the market place.
- formulate advice to NMI aimed at improving the efficiency and effectiveness of the regulatory framework and service levels.

A list of CILC stakeholder representative organisations is at Appendix 1.

International Engagement

NMI represents Australia as a member of the International Organisation of Legal Metrology (OIML), an intergovernmental treaty organisation whose primary aim is to facilitate trade, establish mutual confidence and support consumer protection through enabling countries to put in place mutually compatible and internationally recognised legal metrology infrastructure.

Amongst other things, OIML develops recommendations that establish performance requirements for measuring instruments and specify methods and equipment for testing whether instruments meet those requirements. OIML Member States agree to implement these recommendations to the greatest possible extent.

In Australia, OIML recommendations are currently adopted, after consultation with domestic stakeholders, as NMI recommendations (pattern approval standards) and National Instrument Test Procedures (NITPs) covering measuring instruments in use for trade. In accordance with the Act, where specifications of OIML recommendations are inconsistent with the national interest or impractical because of particular circumstances in Australia, NMI can modify those specifications before adopting them in Australia.

As outlined below (KPI 2), after consultation with stakeholders in 2015-16 NMI adopted new and updated international standards for: electricity meters; water meters; liquid measuring systems; and road and rail tankers.

NMI represents Australia's interests on OIML committees developing documentary standards in areas of priority for Australian stakeholders. NMI can seek input from Australian manufacturers and other stakeholders on the development and revision of those international documentary standards in order to, amongst other things, support market access for innovative designs and applications being developed in Australia.

NMI also represents Australia as a member of the Asia Pacific Legal Metrology Forum (APLMF), the peak Asia Pacific body in legal metrology. Participation in APLMF helps ensure a level playing field for Australian industry when trading within the region.

7. KPI 2: Communication with regulated entities is clear, targeted and effective

7.1 Summary of achievement

NMI undertook comprehensive engagement with stakeholders, including: one-to-one, focus groups and formal public consultation on all proposed changes to policies and regulatory requirements.

100% favourable responses were received in 2015-16 from a survey of NMI's pattern approval laboratory clients.

A targeted campaign was developed and implemented to provide information and advice to traders in regional and remote Aboriginal and Torres Strait Islander communities about their rights and responsibilities under trade measurement law.

NMI commissioned an external review to recommend improvements to the user experience for businesses visiting the NMI website. Initial work to implement those recommendations was undertaken in 2015-16 and will continue over 2016-17.

7.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 2 are:

1. Regulators provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.
2. Regulators consider the impact on regulated entities and engage with industry groups and representatives of the affected stakeholders before changing policies, practices or service standards.
3. Regulators' decisions and advice are provided in a timely manner, clearly articulating expectations and the underlying reasons for decisions.
4. Regulators' advice is consistent and supports predictable outcomes.

7.3 NMI's approach

NMI seeks feedback through surveys and consultations.

NMI engages with stakeholders for information sharing with the aim of improving Australia's legal metrology system and reducing regulatory burden. NMI convenes CILC meetings where NMI provides updates on its activities and CILC members provide feedback and raise issues. NMI also convenes other regular and ad-hoc meetings with regulated entities.

NMI publishes a number of standards and test procedures which set out requirements and expectation of manufacturers and licensees. These standards are generally adoptions of international standards. Consultation with manufacturers and licensees improves transparency in regulation and supports continuous improvement.

7.4 Results

Percentage of stakeholder feedback that is favourable (customer satisfaction)

Since January 2016 NMI has invited all pattern approval laboratory clients to complete a survey on satisfaction with service delivery. Of the survey respondents in 2015-16, all (100%) agreed or strongly agreed with the following statements:

- it was easy to contact the right person to assist me;
- I received an acknowledgement of the application in a timely manner;
- the application process was clearly explained;
- the person I was dealing with clearly explained what information was required;
- the results of the assessment or decision were clearly explained;

- the person I was dealing with was knowledgeable and professional;
- the Pattern Approval Section was easy to deal with; and
- the Pattern Approval Section responded to my questions in a timely manner.

NMI maintains a compliments and complaints register to compile stakeholder feedback on trade measurement service provision and compliance and enforcement activity. Of six items added to the register in 2015-16, three (50%) were favourable.

NMI is included in the Department of Industry, Innovation & Science's annual stakeholder satisfaction survey. The most recent survey was completed in 2015 and confirmed continued satisfaction levels of over 80% for NMI since 2010.

Number of information sharing meetings with key stakeholders (effective communication)

As outlined in more detail below, NMI held a range of stakeholder meetings in 2015-16 to discuss proposed changes to regulation/standards.

NMI also held around 85 additional meetings in 2015-16 with industry associations, companies and organisations to receive feedback and discuss developments in technology and business models and associated regulatory compliance issues.

Two scheduled CILC meetings were held in 2015-16.

Percentage of instances in which stakeholders are consulted on the development of regulations (transparent development of standards)

All proposed changes to policy/standards are preceded by comprehensive engagement with stakeholders, including: one-to-one, focus groups, and formal public consultation. Some examples from 2015-16 are listed below.

Public consultations were held July to August 2015 on adopting the new international standard for the pattern approval of electricity meters, including smart meters.

Targeted consultations with industry stakeholders were undertaken in relation to National Instrument Test Procedures (NITPs) for complex measuring instruments: belt weighers; hoppers (both automatic and non-automatic); train weighing-in-motion systems; and weighbridges, in order to:

- assess the regulatory burden of the existing test procedures;
- assess the potential for reform of the existing test procedures;
- identify possible options for streamlining the existing test procedures; and
- identify the impact of any changes to the existing test procedures and associated regulatory savings.

NMI assisted the Sectoral Growth Policy Division of the Department of Industry, Innovation and Science with undertaking public consultations over November and December 2015 on Part 4 of the National Trade Measurement Regulations 2009 concerning packaging measurement and addressing three key questions:

- can the regulations be simplified?;
- could the exemptions to the regulations be expanded (or reduced)?; and
- should a principles based approach be adopted for the regulations overseeing the measurement mark?

A consumer survey was conducted over November and December 2015 seeking feedback on regulations relating to the measurement mark (quantity statement).

Following a two-staged consultation process over 2014 and 2015 in relation to water metering pattern approval standards, NMI adopted the updated international standard as NMI R 49 Water Meters for Cold Potable Water and Hot Water.

Public consultations were held to gather input from stakeholders for the review of international pattern approval standards: OIML R 117 Dynamic measuring systems for liquids other than water; and OIML R 80 Road and rail tankers with level gauging.

Consultations were held with the sugar refining industry on developing a framework, verification methodology and international standard for the use of Near Infra-Red (NIR) instruments for the measurement of sugar quality.

Compliance with government accessibility guidelines

Compliance with the Government's accessibility guidelines is incorporated in NMI's approval processes for development/publication of guidance materials in print and on NMI's website.

Guidance and information is appropriate to the target audience.

Industry-specific guidance materials on compliance with trade measurement law are available on the NMI website and in printed form and have been translated into a number of languages, including: Vietnamese, Chinese and Arabic.

As part of an on-going campaign to provide information and advice to indigenous traders and communities about their rights and responsibilities under trade measurement law, NMI has developed an inspection and education program for regional and remote Aboriginal and Torres Strait Islander communities. This program is supported by posters developed in consultation with an indigenous communications company and Charles Darwin University. The program was launched in 2015 with radio announcements, prepared and broadcast by the Central Australian Aboriginal Media Association (CAAMA) and Aboriginal Broadcasting Australia, in English and ten Indigenous languages: Alyawarre, Anmatyere, Eastern Arrente, Luritja, Pitjantjatjara, Walpiri, Western Aranda, Kriol, Murrinh Patha and Yolngu Patha.

NMI recently commissioned an external consultant to review the user experience for stakeholders searching for regulatory compliance information on the NMI website. NMI has implemented changes to the website to reflect the recommendations of that review and will undertake further work over 2016-17.

Decisions and processes are clearly articulated

NMI outlines its performance and delivery standards for the administration of legal metrology regulation, including timeframes for decision making, in its published [Service Charter](#).² As indicated above, NMI consistently meets those published timeframes for decision making.

As outlined below (KPI 3), infringement notices with associated fines are a relatively infrequently used part of NMI's graduated/proportional response to identified non-compliance with trade measurement regulation. NMI's infringement notices include statements of reasons and advice about relevant review or appeal mechanisms.

Provision of consistent advice

As outlined below (KPI 3), a range of instruction documents and manuals have been produced to provide quality assurance processes for NMI's inspection, investigation and education activities. To ensure a nationally consistent approach by NMI staff when interacting with regulated entities, these documents and manuals provide procedures, advice and templates for both verbal and written communication with stakeholders.

² <http://www.measurement.gov.au/Publications/trademeasurement/Documents/TMServiceCharter.pdf>

8. KPI 3: Actions undertaken by regulators are proportionate to the regulatory risk being managed

8.1 Summary of achievement

NMI's risk-based compliance and enforcement policy provides for a range of escalating responses proportionate to the risks associated with any identified non-compliance.

More than 97% of over 3,600 enforcement actions in 2015-16 did not involve a fine or more severe penalty, demonstrating NMI's proportionate response to identified non-compliance.

NMI staff skills in risk assessment have been enhanced through on-going training in risk management policies, processes and procedures.

8.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 3 are:

1. Regulators apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions.
2. Regulators' preferred approach to regulatory risk is regularly reassessed. Strategies, activities and enforcement actions are amended to reflect changing priorities that result from new and evolving regulatory threats, without diminishing regulatory certainty or impact.
3. Regulators recognise the compliance record of regulated entities, including using earned autonomy where this is appropriate. All available and relevant data on compliance, including evidence of relevant external verification is considered.

8.3 NMI's approach

NMI's trade measurement [Compliance and Enforcement Policy³](#), published in hard copy and available on the NMI website, provides for a range of regulatory responses for compliance and enforcement proportionate to the risk being managed. The Compliance and Enforcement Policy articulates a risk management framework based on the consequence and likelihood of non-compliance. Consequence is defined as the harm resulting from economic impacts and reductions in business and consumer confidence in the regulatory system.

The aim is to achieve a high level of consumer and business protection and avoid harm without unnecessary compliance costs or burdens for business. The factors in determining enforcement priorities and proportionate responses to non-compliance therefore include:

- the extent of financial detriment to consumers or to industry;
- the extent of repeat contravention of the national trade measurement legislation;
- referrals from any consumer protection agencies or regulators;
- particular contraventions of high public interest; and
- special circumstances that give enforcement actions added significance such as deterrence of a non-compliant practice within an industry and protection of particularly vulnerable or disadvantaged groups.

Determining the extent of harm may account for either or both of:

- the impact of any single instance of non-compliance; or
- the cumulative effect of many individual instances of non-compliance.

The factors listed above also inform NMI's risk management related to setting of priorities for establishing and amending the legal metrology infrastructure, eg: pattern approval standards, NITPs and appointment of Authorities for particular industry groups and instrument types.

³ <http://www.measurement.gov.au/Publications/trademeasurement/Documents/ComplianceandEnforcementPolicy.pdf>

Following this risk-based approach to compliance monitoring and enforcement, there is a range of escalating potential responses where non-compliance with measurement regulation is identified. These responses are proportional to the consequence and likelihood of harm resulting from any non-compliance identified and take account of the compliance records of regulated entities.

The initial, and by far the most common, market surveillance activity undertaken by NMI's trade measurement inspectors is a mixture of education and enforcement, informing businesses about their obligations under the law. This includes issuing a non-compliance notice and advice from the inspector and a follow-up visit to check that any issues identified have been corrected by the trader. This is considered the appropriate response where a detected contravention has a low level of consequence and there is minimal likelihood of continued non-compliance. Depending on the severity of any particular contravention more punitive enforcement actions can also be considered.

Where follow-up inspections identify continued non-compliance and/or the level of initial non-compliance breaches certain thresholds, possible enforcement options include warning letters and infringement notices (which currently include a fine of \$900 per offence).

Current thresholds for considering issuing an infringement notice include 2% or greater deficiency in content of packaged goods and inaccuracy of three times or greater maximum permissible error (MPE) for measuring instruments. These thresholds are currently used as a guide and a risk assessment is undertaken in each case to determine whether the consequence and likelihood of non-compliance warrant imposing a fine.

Where non-compliance and infringement notices have not proven successful in deterring traders from breaching trade measurement law, or where auditing activities detect serious issues and it is deemed inappropriate to use non-compliance and infringement notices, further enforcement options include:

- NMI agreeing an enforceable undertaking with a trader; and
- referring matters to the Commonwealth Director of Public Prosecutions (CDPP) for consideration of injunction or prosecution.

8.4 Results

Number of enforcement actions that do not involve a fine

Inspectors conducted over 7,500 initial audits of business premises during 2015-16 and found at least one example of non-compliance with trade measurement law at 34% of those premises. Most of these breaches were relatively minor and, following issue of a non-compliance notice and advice from the inspector, were corrected by the trader.

Of more than 2,400 follow-up visits made by inspectors in 2015-16, only 15% identified any continued non-compliance. This demonstrates that audits of businesses undertaken by NMI are an important activity to promote compliance with the law and thereby minimise the need for further enforcement action.

The following enforcement actions resulting from the just over 10,000 initial and follow-up business audits in 2015-16 did not involve a fine:

- 3,298 non-compliance notices;
- 22 education letters ; and
- 186 warning letters.

Number of enforcement actions that involve at least a fine

Consistent with the principle of proportionality and assessment of risk, more punitive enforcement actions occur on relatively few occasions. Inspectors undertook just over 10,000 initial and follow-up trader audits in 2015-16 and in that period there were only:

- 88 infringement notices issued with associated fines of \$86,050; and

- Seven matters referred for consideration by the CDPP.

Quality assurance processes in place for staff

To provide quality assurance processes for NMI's trade measurement inspection, investigation and education activities, there are a range of instruction documents and manuals, including a Complaints and Enquiries Handling Manual, a Trade Measurement Service Standards Manual, and inspection/investigation instructions covering, amongst other things:

- Investigation Process - Operations Instructions;
- Entry and Exit of Premises;
- Search and Seizure Instructions;
- Exhibit Management Instructions;
- Questioning Instructions;
- Overview of Enforcement Actions;
- Minor Enforcement Actions;
- Infringement Notices; and
- Trade Measurement Prosecution Policy.

Staff trained in risk management policies, processes and procedures

Training programs and workshops have been delivered in 2015-16 to ensure that managers and staff have opportunities to work together on risk-based approaches to trade measurement regulation.

In May 2016 Legal Metrology Branch managers participated in a workshop to review risk-based approaches to regulation and managing compliance.

In June 2016, as part of a Legal Metrology Branch conference, introductory training on risk management, which included a case study covering Risk Assessment on Creation of a National Instrument Test Procedure (NITP), was delivered to all available Branch staff. Risk-based approaches to regulatory issues were also explored in conference workshops.

Further training will be undertaken by Branch managers in 2016-17 through a second risk workshop to build on previous training and assist in refining approaches to identifying, analysing and documenting Branch level risk and agreeing on how those risks will be managed.

Engagement with regulated entities to inform them of the regulators' expectations

The education activities undertaken as part of business audits, as well as the meetings of the CILC stakeholder reference group and regular dialogue with industry associations and individual companies and organisations referred to above (KPI 1), demonstrate NMI's engagement with regulated entities to inform them of their rights and responsibilities under trade measurement law.

NMI also works with individual industry associations to leverage resources to assist with development and distribution of targeted communication materials on trade measurement obligations to industry participants.

9. KPI 4: Compliance and monitoring approaches are streamlined and coordinated

9.1 Summary of achievement

NMI's capacity to build an evidence base for identifying risk to determine priorities for compliance and enforcement activity has been significantly enhanced through development and implementation of a new data management system. This helps ensure that inspection resources are directed to where they are most required and reduces compliance costs for business.

NMI worked closely with the Department of Health to coordinate compliance and enforcement activity related to Tobacco Plain Packaging legislation and trade measurement law. This reduces the frequency of information collection and also reduces compliance costs for business.

9.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 4 are:

1. Regulators' information requests are tailored and only made when necessary to secure regulatory objectives, and only then in a way that minimises impact.
2. Regulators' frequency of information collection is minimised and coordinated with similar processes including those of other regulators so that, as far as possible, information is only requested once.
3. Regulators utilise existing information to limit the reliance on requests from regulated entities and share the information among other regulators, where possible.
4. Regulators base monitoring and inspection approaches on risk and, where possible, take into account the circumstance and operational needs of the regulated entity.

9.3 NMI's approach

As outlined above (KPI 3), NMI's compliance and enforcement strategies and approaches are:

- based on risk;
- reviewed annually;
- published on the NMI website to ensure transparency; and
- allow for a range of regulatory responses while taking account of the circumstance and operational needs of the regulated entity.

Repeat visits to regulated entities as part of market surveillance activities are only made where non-compliance has previously been identified, in order to ensure that advice and assistance provided by inspectors has been acted upon and any breach of trade measurement law has been corrected.

9.4 Results

Collected information being acted upon, stored and re-used

The capacity for data collection, analysis, management and reporting has been significantly enhanced in 2015-16 through development and implementation of a new data management system, the Trade Measurement Analysis and Reporting System (TMARS), and the appointment of a data analyst.

Information collected by NMI inspectors through trade measurement compliance business audits is stored in TMARS, along with data on measuring instrument verifications performed by Servicing Licensees.

TMARS data is analysed to, for example, identify trends in non-compliance for particular instrument types and industry groups, and, as noted above (KPI 3), this analysis is used to inform risk-based prioritisation of future compliance and enforcement activity.

Annual review and publication of compliance and enforcement strategies

NMI annually reviews its risk-management approach to compliance and enforcement and publishes an annual [*National Compliance Plan*](#)⁴ on the NMI website which outlines both: directions for risk-based targeting of compliance and enforcement activity; and performance targets for the trade measurement inspection force.

As noted above, NMI will be using the information generated from the new data management system as an evidence base to better align its inspection, compliance and monitoring activities and performance targets with areas of identified risk.

Coordination with other regulators

Under a Memorandum of Understanding with the Department of Health, NMI provides inspection and education services in relation to business compliance with Tobacco Plain Packaging legislation.

Where appropriate, these activities are undertaken in conjunction with inspections to monitor compliance with trade measurement law.

⁴ <http://www.measurement.gov.au/Publications/trademeasurement/Documents/NationalCompliancePlan.pdf>

10. KPI 5: Regulators are open and transparent in their dealings with regulated entities

10.1 Summary of achievement

A Statement of Expectations has been issued for NMI to clearly outline the Government's regulatory aims and objectives.

NMI worked with national and state-based industry associations in the waste management and recycling sector to develop a fact sheet on regulatory compliance and distribute the information to industry participants.

In 2015-16, the release of annual compliance and enforcement activity data was the subject of media items across TV, radio, newspapers and trade journals, and industry newsletters.

10.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 5 are:

1. Regulators' risk-based frameworks are publicly available in a format which is clear, understandable and accessible.
2. Regulators are open and responsive to requests from regulated entities regarding the operation of the regulatory framework, and approaches implemented by regulators.
3. Regulators' performance measurement results are published in a timely manner to ensure accountability to the public.

10.3 NMI's approach

NMI clearly and consistently articulates to industry and the public its regulatory aims and objectives and enforcement processes and procedures. As noted above (KPI 3), NMI publishes both: its trade measurement [Compliance and Enforcement Policy](#), and an annual [National Compliance Plan](#) on the NMI website. A [summary of compliance and enforcement activity and outcomes](#) and performance against compliance plan targets is also published annually.

When undertaking consultation with stakeholders on the development of regulations, as outlined above (KPI 2), NMI publishes a summary of its responses to the feedback received.

As noted above (Chapter 5), in June 2016 the Secretary of the Department of industry, Innovation and Science issued a Statement of Expectations for NMI which, amongst other things, confirms that NMI's legal metrology activities must be consistent with the Government's preferred approach for best-practice regulation, including:

- a) focusing on regulatory reform to reduce red tape and compliance costs for businesses and the community;
- b) moving towards more principles-based regulation that identifies the desired outcomes, rather than prescribing how to achieve them; and
- c) pursuing a risk-based approach to compliance obligations, engagement and enforcement, allowing for proportionate approaches suited to the size, nature, complexity and risk of regulated entities.

NMI is now developing a Statement of Intent in response to that Statement of Expectations and both documents will be published on the NMI website in 2016-17.

The national trade measurement hotline (1300 686 664) is one of the key contact points for consumers and business to find out about trade measurement law or to lodge a complaint about potential breaches.

10.4 Results

Publication of performance measurement results

An [annual summary of compliance and enforcement activity and outcomes⁵](#) is published on the NMI website and media material is prepared and distributed to publicise its release. In 2015-16, the release of annual compliance and enforcement activity data was the subject of media items across TV, radio, newspapers and trade journals, and industry newsletters.

More detailed information on compliance and enforcement activity and outcomes is also provided on request to stakeholders, including regulated entities and media organisations, where such requests can be satisfied without breaching privacy considerations.

Responsive to requests from regulated entities

In 2015-16 NMI received 921 enquiries from businesses seeking information and advice about the application of trade measurement law to their operations. 97% of these enquiries were responded to within the specified timeframe of 21 days and the average time to respond to these enquiries was four days.

NMI's trade measurement inspectors investigate complaints received about potential breaches of trade measurement law. In 2014–15, we received 769 complaints, mainly from consumers. And 151 (20%) of those complaints were found to be justified.

Working with industry groups to prepare and disseminate guidance materials

NMI works with industry associations and other stakeholders to develop industry-specific fact sheets to address areas where a requirement for further guidance on regulatory requirements and compliance options has been identified.

NMI also works with industry associations, trade journals and newsletters to distribute this material directly to relevant regulated entities. For example, in 2015-16 NMI's trade measurement inspectors identified regulatory compliance issues in the waste management and recycling sector around use of unapproved/unverified/inaccurate measuring instruments. NMI worked with national and state-based industry associations to develop a fact sheet on regulatory compliance and distribute the information to industry participants.

⁵ <http://www.measurement.gov.au/TradeMeasurement/NationalData/Pages/default.aspx>

11. KPI 6: Regulators actively contribute to the continuous improvement of regulatory frameworks

11.1 Summary of achievement

In response to recommendations of an independent review, NMI has commenced and made significant progress on a program of reform to maintain our position as a best practice regulator.

11.2 KPI expectations

The measures of good regulatory performance outlined in the Framework for KPI 6 are:

1. Regulators establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.
2. Regulators engage stakeholders in the development of options to reduce compliance costs. This could include industry self-regulation, changes to the overarching regulatory framework, or other strategies to streamline monitoring and compliance approaches.
3. Regulators regularly share feedback from stakeholders and performance information (including from inspections) with policy departments to improve the operation of the regulatory framework and administrative processes.

11.3 NMI's approach

In order to maintain delivery of best practice regulation, NMI recognises that as an organisation it must adapt, be proactive and innovative as it works with stakeholders to find new approaches to a changing environment.

NMI has undertaken a significant program of work since establishment of the trade measurement regulatory function in 2010 to deliver a nationally harmonised legal metrology framework, including:

- the systems and processes that operationalise the national legislation;
- a national licensing system for Servicing Licensees (including uniform competency requirements);
- accredited training for trade measurement officers and Servicing Licensees; and
- standardised equipment for trade measurement officers (including fleet of vehicles and measuring equipment).

11.4 Results

Improving the efficiency and effectiveness of the regulatory framework

As outlined previously, NMI and the Department of Industry, Innovation and Science are working towards, and have made significant progress on, addressing areas identified for improvement in the independent review concluded in December 2015, including:

- establishment of an NMI Steering Committee within the Department;
- the Secretary of the Department issuing a Statement of Expectations for NMI and work within NMI to develop a complementary Statement of Intent;
- commencement of a legal metrology policy review to clearly and consistently articulate regulatory aims and objectives and provide the principles to inform a subsequent legislative review; and
- development and implementation of a new data management system to assist in enhancing the alignment of regulatory activities with areas of identified risk.

The Legal Metrology Legislative Review will be a major undertaking over a number of years and will commence in 2016-17.

Other work to commence in 2016-17 in response to the recommendations of the independent review will include a review of NMI's trade measurement Compliance and Enforcement Policy.

Sharing feedback and performance information with the policy department

NMI provides quarterly and annual reports to the Executive of the Department of Industry, Innovation and Science which detail, amongst other things:

- compliance and enforcement activity and outcomes;
- extent and areas of interest for consumer and industry enquiries about application of regulation;
- performance against inspection compliance inspection targets; and
- performance against published timeframes for responding to consumer and industry enquiries and advice about potential breaches.

The NMI Steering Committee established by the Department in 2015-16 and chaired by the Head of Science and Commercialisation Policy Division, meets monthly and is a further mechanism to facilitate the flow of information with the policy areas of the Department on trade measurement regulatory issues.

Establishing cooperative and collaborative relationships with stakeholders

As noted above (KPI 1), NMI has established and convenes bi-annual meetings of the CILC stakeholder reference group to

- exchange views about trade and regulatory matters as they relate to trade measurement; and
- formulate advice to NMI aimed at improving the efficiency and effectiveness of the regulatory framework and service levels.

NMI also consults with CILC members out-of-session where necessary to gain input on particular regulatory or industry issues.

In 2015-16, as outlined in more detail above (KPI 2), NMI provided a range of mechanisms to facilitate stakeholder participation in the development and/or amendment of regulatory frameworks. These mechanisms are advertised widely where appropriate, including through industry associations and direct contact with individual affected regulated entities.

In addition to providing a mechanism for advice and guidance on rights and responsibilities under trade measurement law, the National Trade Measurement Hotline (1300 686 664) also provides an avenue for stakeholders to provide feedback on regulatory activities.

Consumer and Industry Liaison Committee Stakeholder Representative Organisations

Consumers

Choice

Consumers Association of South Australia Inc

Consumers Federation of Australia

Queensland Consumers Association

Industry

Accord Australasia Ltd

Australian Food and Grocery Council

Australian Hotels Association

Australian Petroleum Industry Contractors and Suppliers Association

Australasian Convenience and Petroleum Marketers Association

Food & Beverage Importers Association

Master Grocers Australia

National Farmers Federation

National Retailers Technical Standards Committee

Seafood Importers Association of Australasia

Weighing Industry Association of Australia Ltd