



Australian Government
Department of Industry, Science,
Energy and Resources

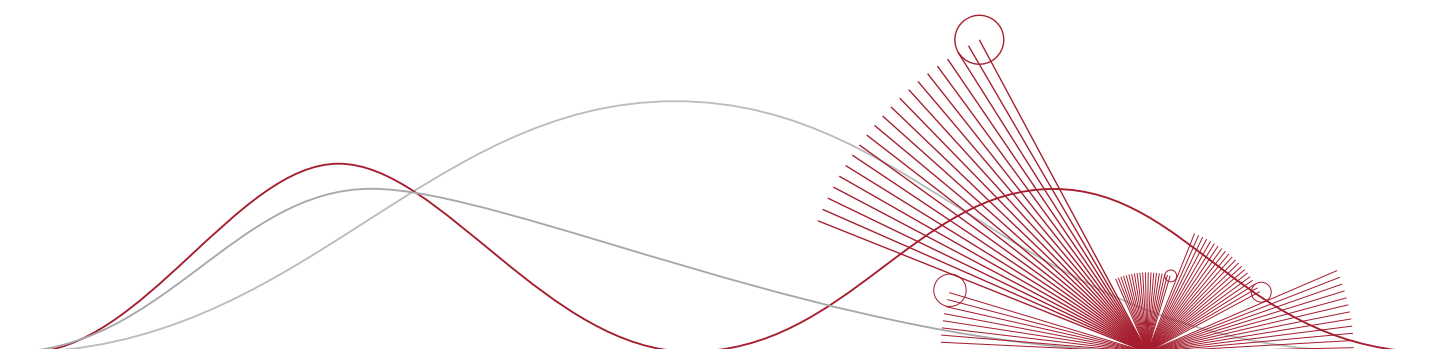
National
Measurement
Institute

OVERALL SUMMARY OF

PUBLIC MEASUREMENT LAW REVIEW CONSULTATIONS

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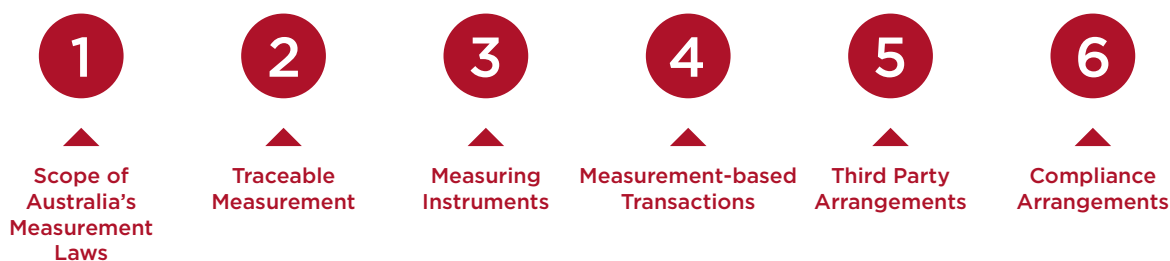
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PUBLIC MEASUREMENT LAW REVIEW CONSULTATIONS



MEASUREMENT LAW REVIEW – DISCUSSION PAPERS



1. Introduction

Between 2017 and 2020 the Measurement Law Review (MLR) undertook consultation with stakeholders who interact with the measurement system. The range of stakeholder types who provided comment was broad. Within and across these stakeholder groups there were differing opinions and viewpoints focusing on a range of technical and specific issues.

This paper aims to present a high level, balanced overview summary of the key points within stakeholder submissions. It is not intended to comprehensively detail the full range of submissions provided by all stakeholders. A more detailed summary of the submissions to the discussion papers can be accessed via the [Measurement Law Review website](#).

2. Key Themes

Reviewing stakeholder feedback from the consultations has uncovered five key themes, and a number of supporting views. The five key themes identified are:

- **Universal support for key components of the current measurement system including:**
 - The third party¹ system
 - A risk-based approach to compliance
 - Specific trade measurement provisions rather than relying on the *Australian Consumer Law* (ACL)
- **The desire for increased international harmonisation:**
 - Mutual recognition
 - Reducing technical barriers to trade
 - Aligning labelling internationally
- **An overall expansion of scope including:**
 - Regulation of significant measurements and non-trade measuring instruments
 - Introducing mandatory re-verification periods
 - Reconsidering exemptions
 - Focusing on incorrect measurement
- **The need for flexibility and the ability to adapt and respond to new and emerging technology including through:**
 - Pattern approval pathways
 - Support for chemical and biological Certified Reference Materials (CRMs)
 - Consideration of how products are sold by measurement
- **Suitability of principles-based regulation:**
 - Prescription aids traceability
 - Prescription is supportive of technical fields
 - Principles-based frameworks could introduce ambiguity
 - Principles-based frameworks support innovation and introduce flexibility

A high level overview of these themes is provided below:

2.1 Key components of the current measurement system

There was universal support throughout consultations for certain key components of the current measurement system to be maintained. These included:

- **Maintaining third party systems:** Responses were received from industry, with the weighing industry highly represented, individuals and state and territory government representatives. These respondents were all of the view that third party arrangements were a net benefit to the metrological system. Cited benefits include:
 - Reduced costs and increased consumer choice through competition.
 - Availability of providers and reduced waiting times.
 - Consistency across providers.
 - Enabling the periodic certification of Electronic Breath Analysers.

All respondents rejected the idea that the Australian Government should implement any of the functions currently outsourced to third parties, citing resourcing issues that would limit accessibility to services. Some suggestions were received that third party arrangements may benefit from a principles-based approach. However, this was contradicted by members of the weighing industry and other third parties who felt that a relaxation of current requirements could result in reduced compliance and disadvantage existing providers.

It was generally agreed that the appointment of third parties should be conducted based on competency and servicing licensees suggested that competence assessments should include demonstrated capability via an observational assessment.

¹ 'Third parties' are entities which have been appointed to perform certain functions under the measurement legislation.

- **Applying a risk-based approach:** There was universal support for a risk-based approach to compliance. Industry members, including the weighing industry, suggested a risk-based assessment could be used for measuring instrument controls and pattern approval.
- **Maintaining a trade measurement framework:** Almost all respondents recognised the importance of a stand-alone measurement framework in preference to relying on general protections in the *Australian Consumer Law*.

2.2 Increased international harmonisation

Across all consultations a number of areas were noted that could potentially be better harmonised with international practice. Each suggestion appeared to reflect the stakeholder's specific interactions with the measurement framework, however a common theme across consultations was that increased international harmonisation would be beneficial.

- **Mutual recognition:** Some areas where mutual recognition arrangements of overseas approvals and standards were suggested included:
 - Some respondents with a scientific / technical background, along with state and territory government representatives, suggested that Australia adopt a practice of international recognition for CRMs and suppliers. It was noted that not all reference materials have appropriate traceability and this can be a challenge during their use in calibration. A weighing industry member felt that only Australian Certified Reference Materials (ACRMs) should be used, however did not elaborate or provide further context.
 - Industry members advocated for acceptance of overseas pattern approvals for measuring instruments. Some members of the weighing industry were firmly against this approach.
 - Several responses encouraged the NMI to make further reference to ISO standards (International Organization for Standardisation), specifically in relation to Legal Metrology Authorities but also more generally.
 - One respondent raised the concern that harmonisation could lead to reduced standards and therefore acceptance of lower quality products.
- **Reducing technical barriers to trade:** Some submissions noted a potential benefit to Australian imports and exports in attaining regulatory equivalence with countries such as the US and the UK. Noting Australia is a small consumer economy exposed to pressures from external regulatory changes that can have a significant impact in the traded sector. A manufacturer recommended recognising measuring instruments that comply with requirements in overseas markets.
- **Aligning labelling internationally:** Most industry groups supported removing prescriptive requirements in the Packaging Review (Part 4² Review), particularly where they limited flexibility and did not align with international requirements. Consumer organisations however, advocated for greater prescription in this area.

² Part 4 of the *National Trade Measurement Regulations 2009* contains prescriptive provisions relating to the format and positioning of measurement information on packaged products.

2.3 Expansion of scope

A number of respondents suggested specific areas where they felt the scope of the measurement system could be expanded. These included:

- **Regulation of significant measurements and non-trade measuring instruments:** The weighing industry, including servicing licensees, proposed that non-trade weighing instruments should be regulated, including those used for health, medical safety, tax collection and law enforcement. Farmers raised concerns about inconsistencies in quality measurements, such as grain imaging and the microbial content of honey which are reliant on industry codes.
- **Requiring re-verification of instruments:** Introducing re-verification periods for measuring instruments was supported by the weighing industry and some other licensed third parties. Many public weighbridge licensees supported current re-verification requirements for public weighbridges, however, an industry stakeholder indicated that they would like this requirement removed if the owner can demonstrate an effective internal quality management system.
- **Reconsidering exemptions:** Consumer associations questioned whether exemptions for utilities including electricity and data usage were still appropriate. A state and territory government agency suggested lifting the current exemptions for non-urban water meters and an industry group raised the issue of the accuracy of water and electricity sub-metering systems.
- **Incorrect measurement:** There was general support for the scope of shortfall offences to be expanded to include buying and selling and an industry body suggested focusing on incorrect measurement more generally.

2.4 Flexibility and ability to adapt and respond to new and emerging technology

All stakeholder types recognised the need for the measurement framework to flexibly adapt and respond appropriately to new and emerging technologies. A few areas of the framework were identified as potentially benefiting from a more flexible approach:

- **Pattern Approval:** The weighing industry and other industry stakeholders identified pattern approval as an area that could benefit from a more principles-based approach, allowing for the implementation and trial of new technologies.
- **Biological and chemical measurement:** Some respondents with scientific / technical backgrounds identified new technology in biological and chemical metrology as a current challenge, particularly where industry are dependent on reference materials that may not have appropriate traceability.
- **How products are sold by measurement:** Currently there are a number of requirements surrounding how certain products are to be sold. A number of industry submissions requested that the NMI consider introducing a degree of flexibility into these requirements that allow them to adapt to changing marketplace conditions. Consumer groups were concerned that greater flexibility in this area would lead to consumers not having comparable information to make informed purchasing decisions.

More generally:

- Industry respondents conveyed a desire for a more supportive framework that contained more workable guidelines. Industry were supportive of a principles-based approach, which they believed would enable the NMI to adapt to the changing digital economy.
- On the question of principles-based approaches, an individual expressed the opinion that a new system should be fit for purpose into the future and be able to encompass new technologies. They also noted that it may be a challenge to make such a system sufficiently robust.
- Both industry groups and consumer groups considered it appropriate for the legislation to prescribe how certain goods were sold however, unlike consumer groups, industry groups also wanted greater flexibility in this area with clearer processes.

2.5 Suitability of principles-based regulation

It was unclear whether respondents were approaching the questions regarding principles-based legislation with an “all or nothing” viewpoint or understood the application could vary across the framework. While there was some support for the flexibility offered by a principles-based approach, stakeholders had reservations about the application of this approach in certain areas. It will be important for NMI’s Measurement Law Review to consider where prescriptive elements identified as essential should be retained, and to clarify and communicate regulatory approaches at options for reform.

- **Prescription aids traceability:** A number of stakeholders expressed the need for robust provisions to facilitate traceability back to SI units (International System of Units), ensuring there are no gaps compromising the integrity of the system. They identified prescription as being necessary for traceability and to establish the SI units, however accepted that more detailed instructions on traceability pathways could be placed in guidance materials.
- **Prescription is supportive of technical capability:** There was broad support from a range of stakeholders including consumer groups and the weighing industry, which implied that the technical nature of measurement was conducive to prescription. There was universal support for the ongoing provision of National Sampling and Test Procedures for Pre-packaged Products (NTP) and National Instrument Test Procedures (NITP)³ in order to provide clear testing procedures, particularly from third parties in relation to measuring instrument testing. Third parties also noted that the availability of these procedures provided clarity that enabled them to train staff to a known standard, and provided both the regulator and industry with the necessary capability to ensure confidence in measurement results.
- **Principles-based frameworks could introduce ambiguity:** A number of respondents listed one or more concerns surrounding a principles-based approach, including the introduction of ambiguity in the interpretation and application of the legislation, subjective interpretations and associated cost burdens. One respondent noted that any principles-based approach should be measurable, enforceable and maintain global alignment.
- **Principles-based frameworks support innovation and introduce flexibility:** Quite a few respondents noted areas of the framework that could benefit from the flexibility associated with a principles-based approach. One justification provided for this was that it would be better suited to an evolving digital economy and be able to flexibly adapt to new challenges. Respondents identified the following areas where a principles-based approach may be appropriate:
 - packaging requirements;
 - how products are sold;
 - the approval of measuring instruments prior to trade use;
 - compliance and enforcement arrangements.

³ The NMI produces and makes available test procedures that describe the step by step process for verifying measuring instruments ([NITPs](#)) and sampling and testing pre-packaged products ([NTP](#)).



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**...a better framework for
measurement in Australia**