



Australian Government  
Department of Industry,  
Innovation and Science

**National  
Measurement  
Institute**

# **Legal Metrology Policy Review Response Paper**

National Measurement Institute

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## Introduction

The Australian Government undertook public consultations in 2016 to confirm and articulate the policy objectives for legal metrology to best serve the needs of Australian business and consumers now and in to the future.

Legal metrology covers all measurements carried out for any legal purpose including trade. It is part of the supporting technical and regulatory infrastructure that enables our society to function. A [Legal Metrology Policy Review Discussion Paper](#)<sup>1</sup> was prepared and released for public comment from 12 August to 26 September 2016. Over 500 stakeholders received direct notification of the consultation via email. The opportunity to comment on the discussion paper was also advertised via Department of Industry, Innovation & Science (the department) websites, e-newsletters, Facebook, Twitter and LinkedIn accounts.

40 written submissions were received on the discussion paper and 36 non-confidential submissions have been made available on the [NMI website](#)<sup>2</sup>.

In addition, 22 face-to-face and teleconference meetings were held with key industry and consumer stakeholders in Canberra, Brisbane, Melbourne, Adelaide and Sydney.

This document summarises the feedback on the discussion paper and provides responses to the issues raised. It should be noted that not every topic covered in submissions is represented here, nor do the examples of feedback necessarily represent all feedback on a particular topic. Examples are included to give a general sense of feedback only.

All stakeholder responses will, however, be used to inform consideration of the strategic direction for legal metrology in Australia. As noted above, all non-confidential submissions are available in full for review on the [NMI website](#).

## Key themes

Key feedback received from stakeholders included:

- the policy objectives proposed in the discussion paper were widely supported as being appropriate and comprehensive;
- the introduction of a more principles-based legislative framework will require finding the appropriate balance between allowing for flexibility to encourage innovation and providing sufficient guidance to make it easy for businesses to understand how to meet their obligations;
- general support for refining the existing risk-based approach to targeting compliance and enforcement activities; and
- some support for having greater flexibility in determining pattern approval requirements to support industry development and innovation.

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<sup>1</sup> [https://consult.industry.gov.au/national-measurement-institute/lmreview/supporting\\_documents/LMPolicyReviewDiscussionPaper.pdf](https://consult.industry.gov.au/national-measurement-institute/lmreview/supporting_documents/LMPolicyReviewDiscussionPaper.pdf)

<sup>2</sup> <http://www.measurement.gov.au/Industry/Pages/Legal-Metrology-Policy-Review-Submissions.aspx>

## Outcomes of the consultation

### Policy objectives for legal metrology in Australia

The consultation sought stakeholder feedback on proposed policy objectives to confirm the strategic direction and desired outcomes for legal metrology in Australia. The proposed policy objectives were:

- supporting confidence in the measurement system;
- facilitating a level playing field for business;
- consumer (or the broader term customer) protection; and
- supporting industry development and technology innovation.

The majority of feedback from stakeholders indicated that all four proposed policy objectives are highly important.

Several stakeholders suggested revised wording to the proposed policy objectives. For example:

- removing the reference to the term 'customer' to avoid confusion;
- adding the word 'integrity' to supporting confidence in the measurement system; and
- including a focus on community protection.

Additional policy objectives suggested by stakeholders included:

- ensuring the full economic benefit is obtained for measurements; and
- facilitating effective operation of whole-of-government initiatives.

### NMI Response

*It is clear from the public consultations, and a review of legal metrology activities in comparable countries, that the primary objective of legal metrology is to support confidence in measurements and thereby facilitate the smooth functioning of the economy and the legal system.*

*Consistency and certainty in measurement supports fair and open competition and provides a level playing field for business by ensuring that all market participants, irrespective of their size or financial strength, follow the same rules and get equal opportunity to compete.*

*Each year in Australia, more than \$750 billion worth of goods and utilities are sold on the basis of their measurement. Reliable representations of measurements allow consumers and businesses to make informed purchasing decisions and support the efficient operation of the market.*

*Confidence in accurate measurement also delivers:*

- *reduced disputation and transactions costs in commercial dealings; and a*
- *sound evidential basis for legal and regulatory measurements.*

*A robust legal metrology system which supports traceable measurements within a reliable framework provides a firm basis for that confidence. Such a system should include elements that ensure:*

- *measuring instruments are fit for purpose;*
- *measurements are made correctly; and*
- *representations about measurements are accurate.*

The stakeholder feedback has therefore confirmed the following policy objectives to inform the strategic direction of legal metrology:

- **Supporting confidence in the measurement system**  
*Facilitating the smooth functioning of the economy and the legal system*
- **Facilitating a level playing field for business**  
*Supporting fair and open competition*
- **Consumer protection**  
*Enabling purchasers to make informed purchasing decisions*
- **Supporting industry development and technology innovation**  
*Influencing the development of measurement-related international documentary standards and supporting Australian businesses to compete internationally.*

## International cooperation and harmonisation

The majority of stakeholders strongly supported Australia's continued participation in development of International Organization of Legal Metrology (OIML) documentary standards and the adoption of those standards as pattern approval requirements for measuring instruments.

Mixed responses were received regarding amending OIML standards with reference to alternative documentary standards from organisations such as the International Organization for Standardisation (ISO) and the International Electrotechnical Commission (IEC). For example several stakeholders raised concerns regarding the metrological suitability of ISO and IEC documentary standards, whilst other stakeholders noted the importance of greater flexibility regarding pattern approval requirements to support industry development and innovation.

### NMI Response

*The department will continue to adopt OIML documentary standards and will consider amendments with reference to alternative documentary standards where there is a strong industry requirement.*

## Moving to more principles-based legislation

The majority of submissions supported the introduction of a more principles-based legislative framework while indicating the need to find an appropriate balance between allowing for flexibility to encourage innovation and providing sufficient guidance to make it easy for business to understand how to meet their obligations.

Several stakeholders raised concerns regarding the potential lack of clarity and inconsistency in a principles-based regulatory framework leading to increased costs for business and difficulties in managing compliance. For example, the Weighing Industry Association suggested that making businesses responsible for decisions on how to comply with regulatory requirements could lead to a decline in confidence in the measurement system.

There was general agreement among submissions that guidance material should ensure that all stakeholders have a comprehensive understanding of policy objectives and the outcomes being sought. A number of submissions indicated that guidance materials should be developed in close consultation with stakeholders and be endorsed by industry as codes of practice.

Submissions were divided on whether guidance materials should have legislative force. For example, some submissions indicated that documents such as National Instrument Test Procedures (NITPs) should be legally binding, while other submissions indicated that preserving the flexibility inherent in principles-based regulation meant that guidance materials should not be legislated.

### **NMI Response**

*NMI will continue to closely involve relevant stakeholders in development and dissemination of guidance materials, including through codes of practice where appropriate, to ensure that businesses have the necessary information to assist them in complying with their obligations under the law.*

*The legislative status of guidance material will be considered as part of any forthcoming review of measurement legislation. It would, however, be consistent with best-practice regulatory models for guidance material not to be legislated.*

*As noted in the Discussion Paper: "Principles-based regulation focuses more on principles and objectives and less on prescriptive rules. By focusing on the purpose behind the rules, a principles-based approach allows regulated entities to make their own decisions about how to comply with the desired outcomes."*

### **Risk-based approaches to compliance and enforcement**

There was general support across submissions for the existing risk-based approach and level of compliance and enforcement activity.

Some submissions indicated a preference for increased compliance and enforcement activity. In this case, consumer groups were seeking greater protection for their stakeholders while industry groups wished to ensure that unscrupulous traders didn't gain a competitive advantage through non-compliance.

Several stakeholders also supported greater resources being devoted to educating businesses on their obligations. Both industry and consumer submissions indicated that more publicity about enforcement actions would also assist in this regard.

One submission suggested that government should not regulate in this space at all and that parties could seek remedies via the Courts when disputes arise. In a similar vein, the Food and Beverage Industry Association (FBIA) suggested that compliance and enforcement should be focused at the retail consumer level as business to business disputes could be resolved under contract law. Meanwhile, the Consumers Federation of Australia indicated support for compliance and enforcement activity across all levels of the distribution chain.

### **NMI Response**

*The department will continue with work to further refine its approach to risk-based targeting of compliance and enforcement activity to ensure the most effective use of available resources to gain the best outcomes for Australian businesses and consumers.*

### **Measurement Marking on Product Labels**

Two industry groups, ACCORD (representing the hygiene, cosmetic and specialty products industry) and the Australian Food & Grocery Council (AFGC), raised the issue of regulations relating to measurement marking on product labels and were particularly concerned about the costs of re-labelling cosmetic products imported from the EU. In the EU, measurement markings are permitted on the back of packages rather than the front, as required under Australian law.

The AFGC also seeks general reform to measurement marking regulation, replacing detailed prescriptive requirements with four principles: prominent, legible, metric and colour contrast. In addition, the AFGC noted that greater education of small and medium-sized businesses is needed regarding regulations on the use of the 'e' mark on product labels to indicate compliance with requirements of the average quantity system (AQS).

ACCORD expressed disappointment at a perceived lack of progress on action to follow-up a recent review of measurement labelling laws.

The Queensland Consumers Association is of the view that any action to amend measurement labelling laws should be included as part of amendments to the Act and Regulations more generally.

Vision Australia is concerned that regulations should ensure protection for consumers with impaired vision or mobility and called for strict labelling laws to be retained.

### **NMI Response**

*The department is developing an Options Paper following stakeholder consultation on a Review of Part 4 of the National Trade Measurement Regulations. The Options Paper will be released for consultation early in 2017 and will, among other things, specifically examine options to address stakeholder concerns regarding the relabelling of products.*

*The planned review of measurement legislation more broadly will seek to identify other areas where it is possible/appropriate to reduce the existing level of prescription and move to a more principles-based regulatory framework. This is consistent with both Government policy and international best practice, and will assist in reducing any unnecessary barriers to trade.*

*Any recommended changes to the laws relating to measurement marking arising from the activities outlined above will take account of the need for consumers to have appropriate information on which to base purchasing decisions.*

*The department will continue to work with individual businesses and industry groups to raise and reinforce awareness of the regulatory requirements of the average quantity system (AQS).*

### **Verification of Measuring Instruments**

A number of submissions from the weighing industry, including the Weighing Industry Association and individual Servicing Licensees, recommended the introduction of mandatory regular calibration (re-verification) of all measuring instruments used for trade.

### **NMI Response**

*The department notes that:*

- *mandatory re-verification (with periods of between one and five years depending on the type of measuring instrument) has recently been introduced in Canada under the Fairness at the Pumps Act; and*
- *New Zealand provides a mechanism for voluntary re-verification of measuring instruments where businesses consider this could provide a marketing benefit.*

*The possible introduction of re-verification periods for trade measuring instruments will be considered as part of any forthcoming legislative review. Making any such re-verification periods mandatory would, however, be inconsistent with current Government policy to reduce the regulatory burden on business. In this context, it should also be considered that modern electronic measuring instruments are significantly less likely to require adjustment over time than older mechanical instruments.*

### **Outcomes of the legal metrology policy review**

The Legal Metrology Policy Review Discussion Paper indicated that an outcome of the public consultations would be a “strategic policy statement which outlines the appropriate objectives and outcomes for legal metrology in Australia”.

Since commencement of the legal metrology policy review, however, a wider ranging review of national measurement policy has also been undertaken with targeted stakeholder consultations. Many of the issues identified in the legal metrology policy review, and associated stakeholder feedback, were also considered as part of the national measurement policy review.

As a result, the elements of the planned legal metrology strategic policy statement will be considered in a National Measurement Policy currently being prepared by the department.

The work of both the legal metrology policy review and the national measurement policy review will inform future activities. It is anticipated that any review and revision of measurement legislation generally would include simplifying legal metrology related regulations and reducing the amount of prescription where appropriate.