



Australian Government
Department of Industry,
Innovation and Science

DISCUSSION PAPER:

MEASUREMENT-BASED **TRANSACTIONS**

Measurement Law Review
2019

Have your say

The Australian Government is seeking responses to the issues and questions raised in this paper. You can submit your comments via the Department of Industry, Innovation and Science's Consultation Hub <https://consult.industry.gov.au/measurement-law-review/measurement-in-everyday-life>

Australia's measurement laws can be found on the Federal Register of Legislation <https://www.legislation.gov.au>.

Submissions will be considered by the government to finalise options for reform.

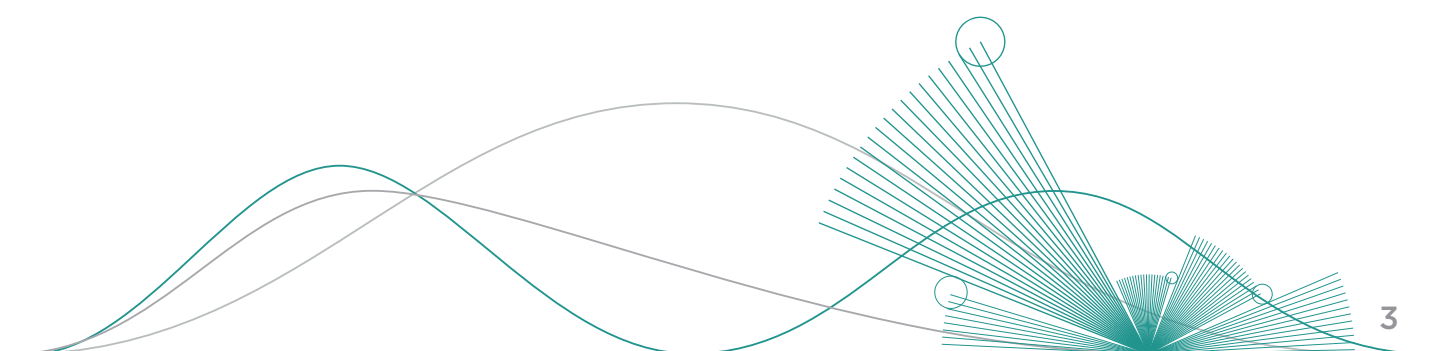
If you have difficulties or questions, please call **1300 686 664** or email measurementlawreview@industry.gov.au.

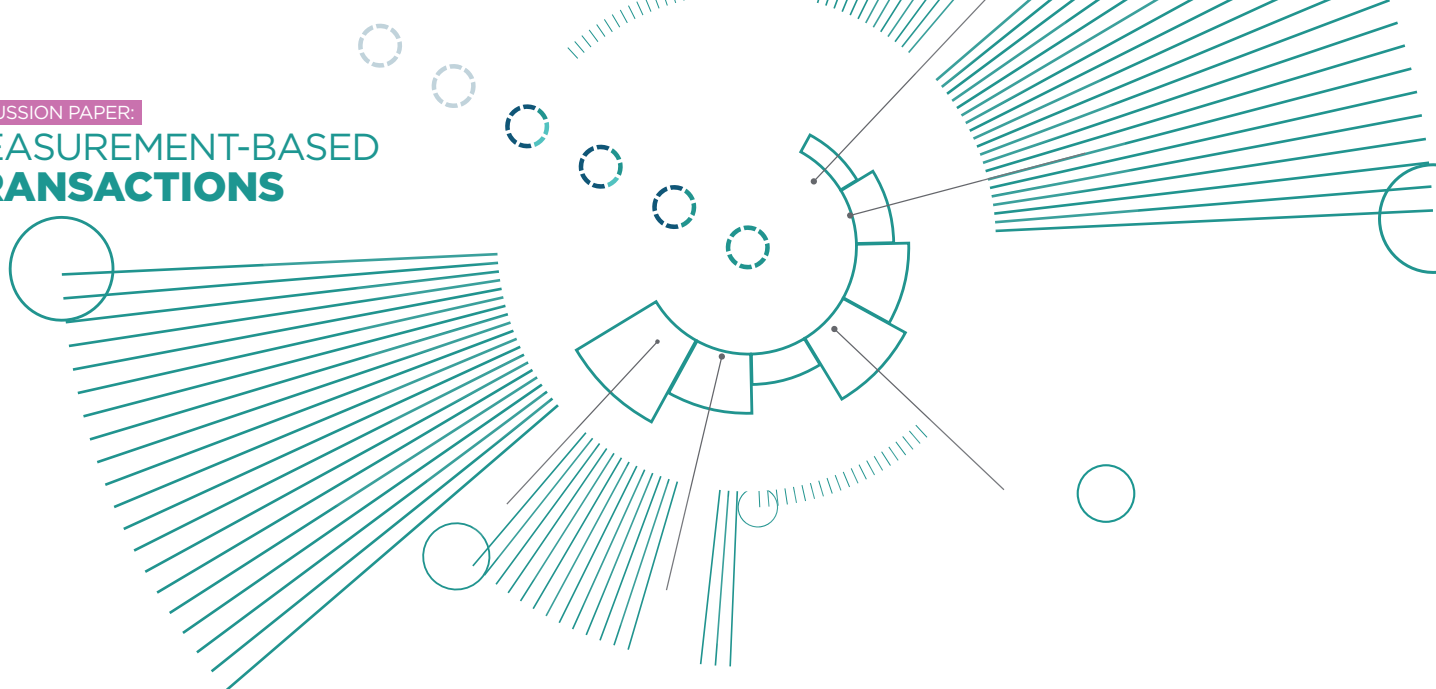
The closing date for submission is **31 May 2019**.

Submissions received may be made public on the consultation website unless otherwise specified. Submissions should indicate whether any part of the content should not be disclosed to the public.

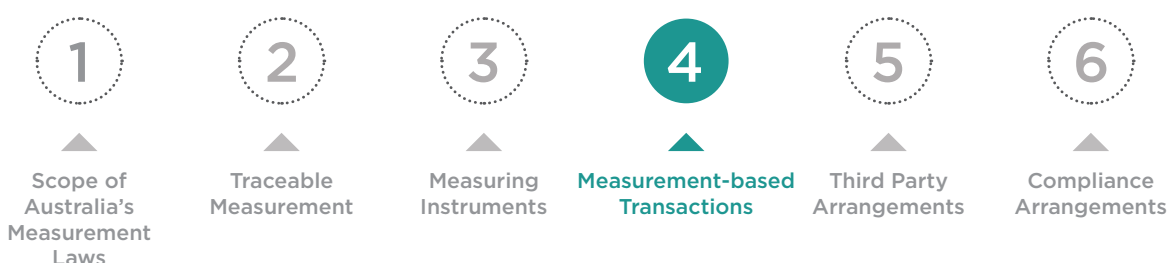
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MEASUREMENT LAW REVIEW – DISCUSSION PAPERS



1. Overview

Measurement plays an important role in Australia's economy. As detailed in section 51(xv) of the Constitution, the Australian Government has responsibility for weights and measures and, in keeping with this responsibility, has enacted legislation to carry out its metrological functions. The objectives of this legislation include establishing and coordinating a uniform national system of measurement, including trade measurement.

A 2015 independent review of Australia's legal metrology activities indicated while the national measurement system is working well, the legislation is:

- very prescriptive and needs to address matters of policy and principle, reduce prescription and remove matters of detail (regulatory processes) into subordinate legislation or guidance material
- complicated and needs to enable the public to understand their obligations and the implications of regulatory measurements, and
- not easy to understand and needs to be written in plain language to improve clarity and simplicity.

The measurement law needs to: better reflect and integrate current policy and principles into the legislation; articulate performance outcomes; and enhance flexibility, with consideration given to the application of a principles-based approach.

1.1 The Measurement Law Review (the Review)

The Australian Government is conducting a review of Australia's measurement laws. The review aims to ensure Australia's measurement framework can support the economy now and into the future as technology, industry and consumer needs evolve.

The Review provides an opportunity to consider whether the current legislation continues to be appropriate, effective and efficient. This paper is not an exhaustive exploration of the topic and you are welcome to raise issues and views not outlined in this paper in your submission. Questions are provided at the end of each section to prompt feedback. Any calculations of costs or benefits of the current regulations or in response to identified issues would be useful to include in your submission.

The Review secretariat would be interested in receiving responses from parties including, but not limited to:

- businesses or individuals involved in making or relying on measurements under the legislative framework
- providers of physical, chemical and/or biological measurement services
- providers of measuring instruments
- innovators of measurement technology
- jurisdictional agencies whose regulations call up measurement laws, and
- consumers and the general public who rely on or are impacted by measurement in their daily lives.

For more information on the Review, please visit www.industry.gov.au/measurement-law-review.

1.2 This Discussion Paper

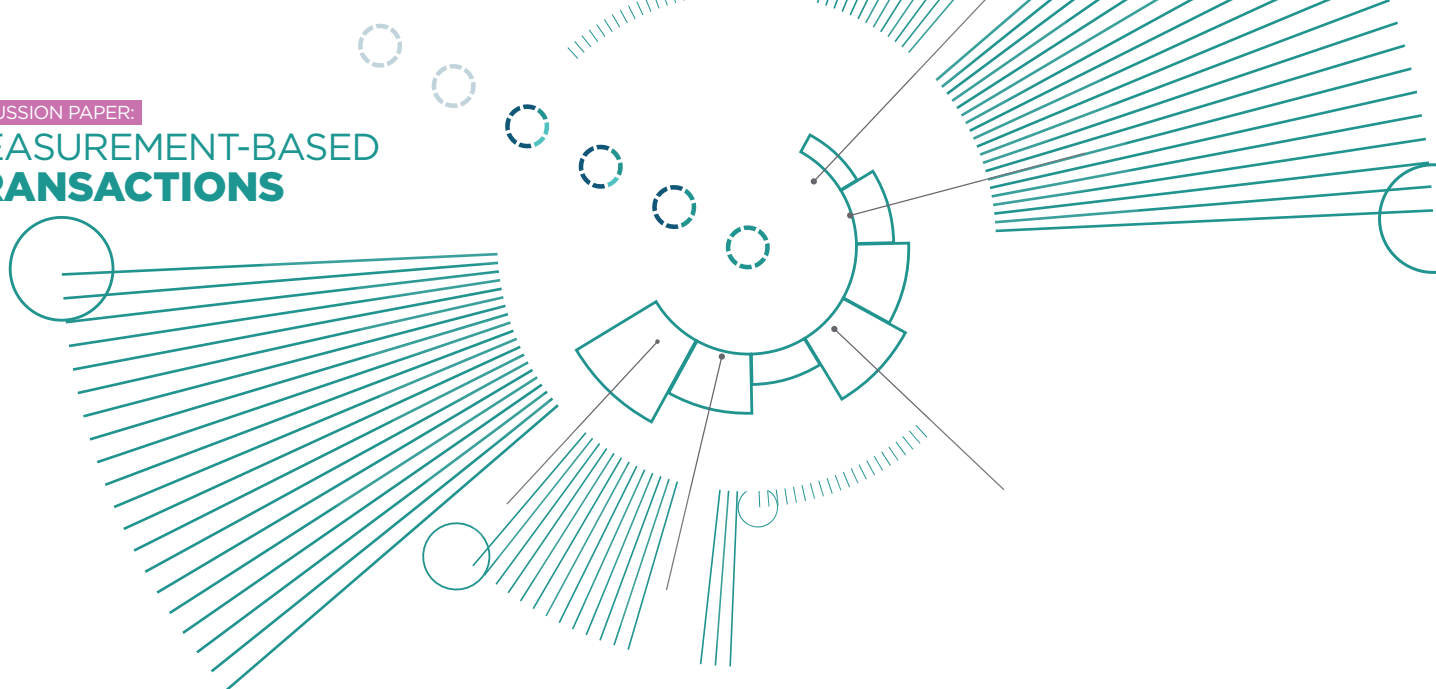
This paper outlines the current legal framework that supports confidence in measurement-based transactions (e.g. purchasing fuel at a petrol station or exporting grain). The current legal framework aims to give businesses and consumers assurance that measurements are indeed what they purport to be and enable them to trade fairly and confidently. The paper seeks input on how the current framework for measurement-based transactions is working and opportunities to reduce prescription and improve flexibility while maintaining confidence in Australia's measurement system.

This discussion paper on Measurement-Based Transactions will refer to:

- The *National Measurement Act 1960* (the Act), Part V (General provisions on using measurement in trade), Part VI (Articles packed in advance ready for sale), and Part VII (Other articles)
- The *National Trade Measurement Regulations 2009* (NTMR).

This paper covers: incorrect measurement (shortfall); the sale of non-packaged goods; and the sale of packaged goods.

For additional information on all discussion papers, please refer to the [Guide to the Discussion Papers](#).



2. Measurement-Based Transactions

In Australia, the value of measurement-based trade is currently estimated to be more than \$750 billion a year.¹ Transactions involving measurements range from simple consumer purchases at the local store to complex multimillion dollar international trade deals.

Because of the volume and value of measurement-based transactions, effective measurement is key to the efficient operation of our economy.

Where goods and services are provided on the basis of measurements, it is beneficial for buyers and sellers to have confidence in those measurements. Regardless of the size of a transaction, having an easily-accessible and consistent means of establishing the validity of a measurement reduces the time and effort otherwise needed to ensure the measurements on which the transaction is based are correct. Reliable representations of measurements help consumers and businesses make informed purchasing decisions, reduce transaction costs and support the efficient operation of the market. The current system that regulates these transactions is referred to as 'trade measurement'.

The trade measurement system exists to enable confidence for buyers and sellers that measurements are accurate. It operates alongside consumer protection legislation such as the Australian Consumer Law (ACL).²

2.1. Current Approach

The *National Measurement Act 1960* (the Act) and the *National Trade Measurement Regulations 2009* (NTMR) establish³ the legal framework for the regulation of measurement-based transactions, including requirements for:

- the sale of goods when sold with reference to measurement
- certain goods to be sold by reference to measurement in prescribed units of measurement, and
- packaged goods and their measurement.

The definition of **measurement** in the Act⁴ excludes measurements used for descriptive purposes, which means that not all references to measurement are included within the application of the current measurement law. For example, the screen size specified when selling televisions (such as a 32-inch display) is descriptive in nature and not regulated by Australia's measurement laws, but is regulated by the ACL provisions such as those relating to misleading and deceptive conduct.⁵

¹ Department of Industry, Innovation and Science, National Measurement Institute *Trade Measurement Compliance in 2017-18* December 2018.

² The ACL can be found in Schedule 2 of the *Competition and Consumer Act 2010*.

³ Particularly Part 4 of the NTMR and Parts V through VII of the Act.

⁴ Section 3 of the Act defines measurement as "a determination of number or physical quantity, other than for descriptive purposes only".

⁵ Section 18 of the ACL.

The measurement framework focuses primarily on the sale of goods (referred to in the measurement law as articles). Transactions where the purchaser is in control of determining the measurement of goods, or where measurement is used to determine the cost of a service, are not directly regulated by the current framework.⁶ However, businesses or individuals undertaking such transactions must ensure any measuring instrument used satisfies regulatory requirements.⁷ The current framework exempts certain types of transactions from the application of trade measurement regulation, including internet services, phone services, taxi fares, motor-vehicle hire and parking meters.⁸ For more information on these exemptions, see the companion papers [Scope of Australia's Measurement Laws](#) and [Measuring Instruments](#).

The legislative framework sets out the practices that should be adhered to in order to assure correct measurement, which is a significant factor in maintaining confidence in the measurement system. Adherence to the legislation is supported by a series of offences that seek to address unacceptable measurement practices through penalties which may include formal court action.

QUESTIONS

2.1.1. What are the biggest issues you experience when it comes to measurement used for trade?

In responding to this question you may wish to:

- highlight any examples where the current law creates unnecessary burdens for business and the costs associated with them, and
- consider any aspects of the current laws that may impact consumer confidence.

2.1.2. How could the current approach be improved to better support measurement-based transactions?

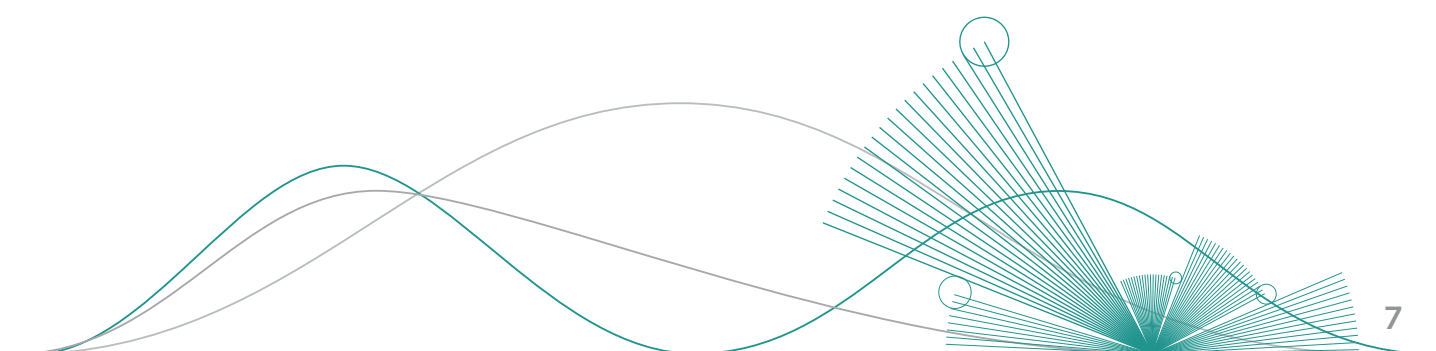
In responding to this question you may wish to:

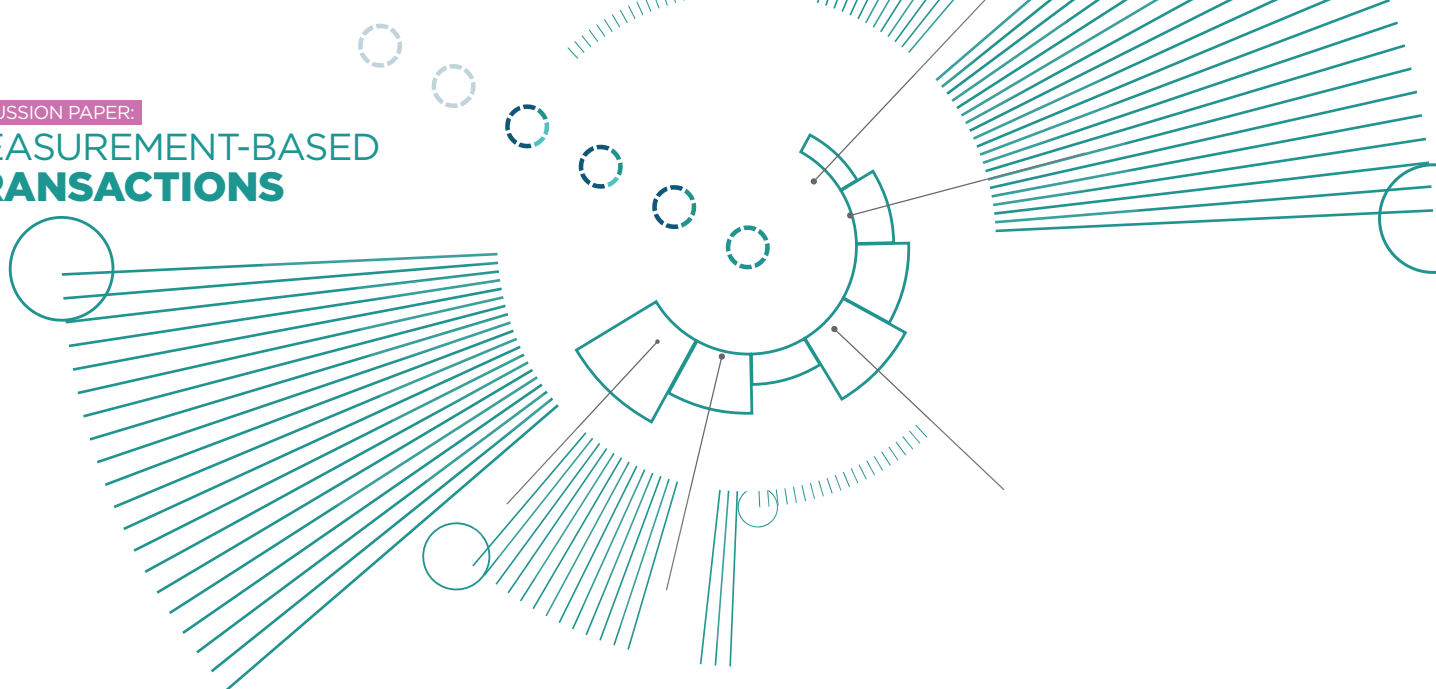
- comment on whether there are any gaps in the current approach and what issues these cause, and
- highlight any changes in industry practices that should now be considered.

⁶ See case studies A and B below for the examples of these types of transactions.

⁷ See the companion discussion paper on [Measuring Instruments](#) for related information on control mechanisms that aim to ensure the ongoing confidence in measuring instruments.

⁸ See Section 4B of the Act.





3. Incorrect Measurement (Shortfall)

3.1. Current Approach

There are a number of offences included in the current legislation relating to the sale of goods where the quantity provided is less than what is represented, referred to as 'shortfall' offences. The offence provisions cover instances where goods are packaged,⁹ as well as where goods are unpackaged and there has been a representation as to the measurement of those goods.¹⁰

Current Australian law provides for a series of offences relating to the sale of goods (articles), that is, when the person selling the goods is responsible for the measurement. As such, these offences do not apply to protect a seller where the buyer is in control of the measurement. An example of this is outlined in Case Study A below.

Case Study A: Gold buying (purchase)

Alison is looking to buy some gold and Bob is looking to sell some gold. They both decide to trade with a merchant based on a price per kilogram with the weight measured by the merchant. Under the current legislation, the merchant is committing an offence if the actual weight of the gold sold by the merchant to Alison is less than she is charged for (that is, she is overcharged). However, Bob sells his unwanted gold jewellery to the same merchant at a price per kilogram and the actual weight of the gold is greater than what the merchant pays Bob for (that is, he is underpaid). In Bob's case, there is no shortfall offence under measurement law being committed by the merchant. Under current measurement law¹¹ Bob (the seller) is not afforded the same protections as Alison (the buyer) enjoys, even though the net financial outcome for both is the same – the merchant has benefited at their expense.

There are also other measurement-based transactions not currently covered by the shortfall offences; for example, providing a service, such as freight or waste disposal, where the amount charged is based on weight and/or volume, or charging for a utility.

⁹ See Subdivision 3-C of Division 3 of Part VI (packing, importing, possessing, selling goods with AQS mark) and Subdivision 4-B of Division 4 of Part VI (packing, importing, possessing, selling goods) of the Act. These offences are replicated in the measurement law for various types of behaviour, resulting in different offence provisions depending on whether the goods are marked/not marked with an AQS mark and whether the activity was to pack, import, sell, or possess, offer or expose for sale.

¹⁰ Section 18KD of the Act.

¹¹ Noting that section 18GD of the Act imposes an offence relating to the inaccurate use of a measuring instrument and that consumer protection legislation may also apply to this scenario.

Case Study B: Waste collection (service)

A restaurant has its waste collected weekly by a waste collection company and is charged based on the weight of the waste collected. The restaurant notices an increase in the amount it has been charged due to an increase in the weight of the waste. The restaurant does not believe it has increased the waste it produces and is concerned the waste collection company may be charging it based on an incorrect measurement. Under the current measurement laws there is no offence for overcharging for services based on an incorrect measurement.¹²

Overseas comparison:

International responses to issues of inaccurate measurement vary. Some countries, such as **Canada**, have 'sale', 'purchase' and 'service' offences for commodities and services involving the determination of a measurement,¹³ which provides protection to buyers and sellers of goods and services. Other countries (e.g. **Singapore**,¹⁴ **New Zealand**¹⁵ and the **United Kingdom**¹⁶) have adopted flexible approaches such as having a small number of 'sale', 'supply' or 'possession' offences which cover a range of scenarios or use terminology such as 'misrepresentation' or 'incorrect statement'.

3.2. Issues

There are a number of issues relating to the current measurement laws associated with shortfall. The main issue identified is the lack of offences relating to incorrect measurement in the delivery of services or the purchase of goods where the purchaser is in control of determining the measurement (e.g. waste removal or buying scrap metal). Gaps in the shortfall offences could potentially undermine confidence in these measurements and lead to increased transaction costs.

Another issue that arises is that the offences relating to goods as they currently stand create a zero tolerance for shortfall. There is no allowance made for, or consideration given to, factors such as the level of accuracy of the measuring instrument used or the fact that the seller may have followed appropriate processes. This could be considered inappropriate if a seller who has made every effort available to them to provide correct measurement still finds themselves exposed to a penalty for shortfall.

Consideration should also be given to the interplay between general consumer protection and mechanisms in the measurement law to ensure confidence in measurement, such as shortfall offences. The policy objective of shortfall is similar to that of other consumer protection frameworks (e.g. the ACL) and the resulting question is whether the current level of interaction, separation and duplication between these frameworks is appropriate.

QUESTIONS

3.2.1. How should different types of shortfall be treated to ensure confidence and protection for both business and consumers?

In responding to this question you might wish to consider:

- if the current approach focusing on the sale of goods is appropriate
- alternative approaches to addressing incorrect measurement, and
- whether the current level of interaction with general consumer protection laws is suitable.

3.2.2. Is the current system of zero tolerance shortfall appropriate? How could this be approached differently?

¹² Noting that section 18GD of the Act imposes an offence relating to the inaccurate use of a measuring instrument and that consumer protection legislation may also apply to this scenario.

¹³ Sections 33 and 34 of the *Weights and Measures Act*, RSC 1985, c W-6 (Canada).

¹⁴ Section 19 of the *Weights and Measures Act* (Cap 349, 1985 Rev Ed) (Singapore).

¹⁵ Sections 16, 16A and 17 of the *Weights and Measures Act 1987* (New Zealand).

¹⁶ Sections 28, 29 and 30 of the *Weights and Measures Act 1985*, c. 72 (United Kingdom).

4. Sale of Non-Packaged Goods

4.1. Current Approach

Non-packaged goods (goods that are not in a sealed package in which they will be sold) that are sold by reference to a measurement (for example weight, volume, area or length) are subject to legal requirements under Australia's measurement legislation including:

- using specified measurement units¹⁷
- sale by net measurement (goods minus any packaging introduced at the point of sale, such as a container or plastic bag),¹⁸ and
- ensuring the stated measurement is correct.¹⁹

Such requirements are in place to minimise the risk of, or address, potential market failures caused by asymmetric information between buyers and sellers. These requirements also help establish confidence on the part of the parties to the transaction that they are receiving what they paid for.

Australia's measurement laws, for the most part, don't specify how goods must be sold. However, there are some goods which must be sold with reference to measurement. Examples of these include:

- Meat must be sold at a price per kilogram that is clearly marked.²⁰
- Beer, stout, ale, brandy, gin, rum, vodka and whisk(e)y must be sold by reference to volume.²¹
- LPG²² when sold by volume must be determined by the amount in litres the LPG occupies, or would occupy, at a temperature of 15 degrees Celsius.

The NTMR includes a list of animals, the meat of which must be sold by weight.²³ If, however, that meat has been subjected to particular processes (such as reconstitution),²⁴ it no longer has to be sold by weight. However, if the meat has been subject to other processes (such as mincing),²⁵ then it does need to be sold by weight. This can create perceived inconsistencies in the way meat is sold.

Case Study C: Selling chicken schnitzels by weight

A butcher makes chicken schnitzels by flattening and crumbing chicken breast, whereas a neighbouring supermarket makes schnitzels by crumbing reconstituted chicken. Meat must be sold by weight and, under the NTMR, chicken breast is defined as meat while reconstituted chicken is not. Because crumbing does not affect this classification, the butcher must advertise his schnitzels at a price per kilogram whereas the supermarket can sell theirs either per kilogram or per schnitzel.

4.2. Issues

Some of the issues for consideration regarding the sale of non-packaged goods include whether measurement laws should prescribe how goods must be sold and particular issues associated with the sale of meat and alcohol.

The measurement law prescribes how certain goods must be sold and this places an additional regulatory burden on businesses who sell these goods. In prescribing how goods must be sold, the focus of these requirements generally appears to be on consumer-related products, adding additional levels of regulation to these types of businesses.

¹⁷ Required under sub-regulation 4.13(1) and Schedule 5 of the NTMR.

¹⁸ Section 18HI of the Act.

¹⁹ This is required by the offence provisions in the Act.

²⁰ Regulation 1.5 & 1.6 of the NTMR.

²¹ Regulation 5.1 of the NTMR.

²² Sub-paragraph 5.2(1)(b)(iv) NTMR.

²³ Refer to the table in sub-regulation 1.5(1), NTMR for a list of those animals considered to be meat for the purposes of regulation by measurement law.

²⁴ Sub-regulation 1.5(4), NTMR.

²⁵ Sub-regulation 1.5(2), NTMR.

For example, meat must be sold by weight²⁶ and where timber is sold by length it must be in millimetres, centimetres or metres.²⁷ In contrast, businesses who trade in much larger-scale commodities are typically afforded the flexibility of determining whether to sell their goods by measurement and, if so, the type of measurement they wish to use. For example, the price of bulk grain is determined based on weight and quality, with the quality determined by a number of factors including protein measurements.

The way the sale of meat is treated by the Act and NTMR creates confusion, inconsistencies, and additional work for business in interpreting their regulatory obligations. However, it provides consumers with comparable information to help them make informed purchasing decisions in much the same way as unit pricing. The reference to volume requirements for the sale of alcohol applies only to certain types of alcohol (excluding, for example, wine and cider). The requirements can be confusing for businesses and it is unclear whether they help inform consumer purchasing decisions as there is a lack of consistency in the volume references used.

Overseas comparison:

New Zealand only prescribes 'solid fuel' to be sold by reference to measurement, which must be sold by weight.²⁸ All other goods must be sold by net weight or measure²⁹ and advertised or exposed for sale using a unit of measurement of the metric system.³⁰ Packaged food products must be marked with a quantity statement.³¹

Canada has no requirement for specific commodities to be sold by measurement, but where products and services are traded on the basis of measurement they must be measured, priced and labelled accurately.³²

The **United Kingdom** prescribes that some goods, including alcohol and solid fuel, must be sold in fixed sizes ('specified quantities'), for example draught beer sold by pint.³³

Japan places controls on certain consumer goods (referred to as 'specified goods') that are required to indicate the net content by weight or volume.³⁴

Singapore requires goods, when sold by measurement, are advertised, displayed or exposed for sale in a unit of measurement of the metric system.³⁵ There are also certain goods that must be sold by a weight or measure of the metric system and at a price expressed by reference to a prescribed metric quantity, including textiles, groceries, pasta, meat, fish, fruit and vegetables.³⁶

QUESTIONS

4.2.1. Are the current requirements for certain goods to be sold by reference to measurement appropriate? If not, how could the current arrangements be improved?

In responding to this question you may wish to consider:

- whether it is appropriate to prescribe in law how certain goods should be sold
- what alternative approaches exist that provide greater flexibility, and
- what information consumers need to make informed purchasing decisions.

²⁶ Regulation 1.5, NTMR.

²⁷ Sub-regulation 5.2(5), NTMR.

²⁸ Regulation 81 of the *Weights and Measures Regulations 1999* (New Zealand).

²⁹ Section 12 of the *Weights and Measures Act 1987* (New Zealand).

³⁰ Section 10 of the *Weights and Measures Act 1987* (New Zealand).

³¹ Regulation 79A of the *Weights and Measures Regulations 1999* (New Zealand).

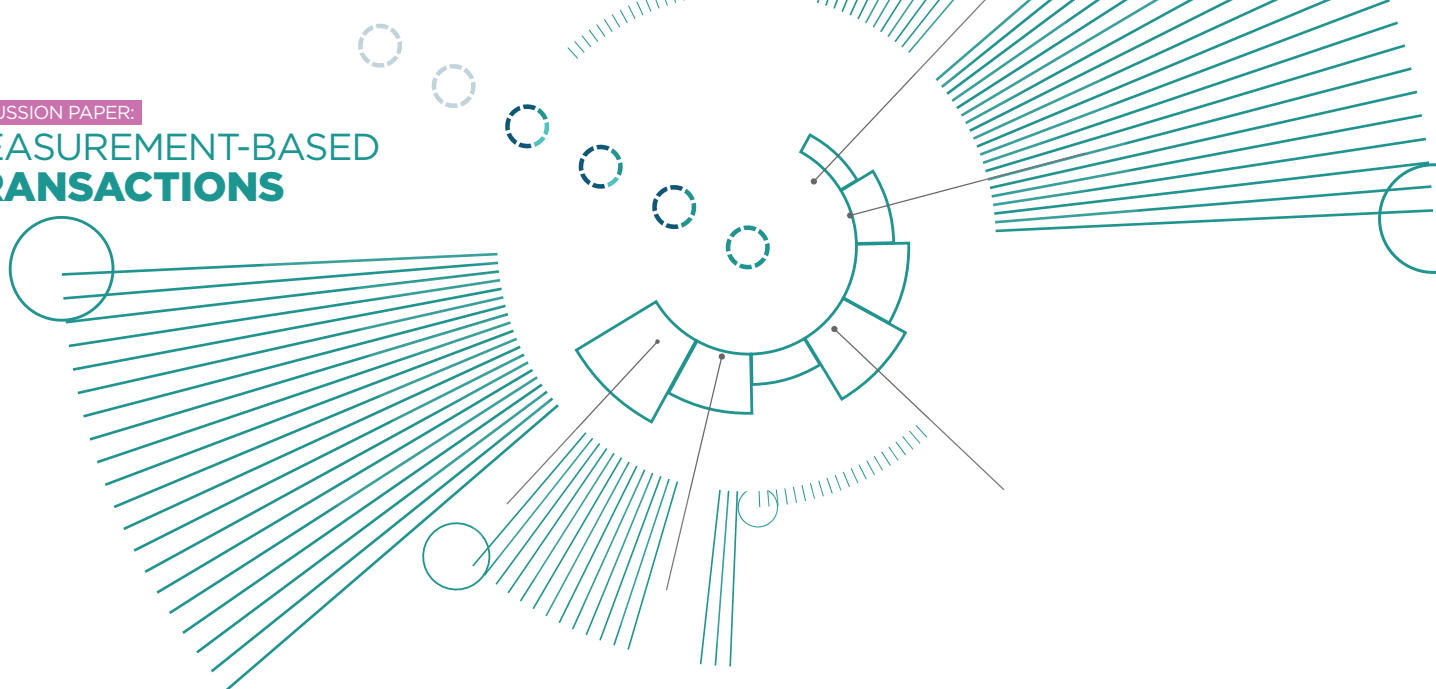
³² <https://www.aplmf.org/canada.html>

³³ <https://www.gov.uk/weights-measures-and-packaging-the-law/specified-quantities>

³⁴ <https://www.aplmf.org/japan.html>

³⁵ Section 18 of the *Weights and Measures Act* (Cap 349, 1985 Rev Ed) (Singapore).

³⁶ *Weights and Measures (Sale of Goods in Metric Units) Order* made under section 16 of the *Weights and Measures Act* (Cap 349, 1985 Rev Ed) (Singapore).



5. Sale of Packaged Goods – Type and Units of Measure

*In 2015, the Australian Government commenced a review of Part 4 of the **National Trade Measurement Regulations 2009** (Part 4). Part 4 predominantly relates to the measurement marking on packaging. The reform options for Part 4 will be incorporated into the broader options developed as part of the Measurement Law Review.*

5.1. Current Approach

Packaged goods must be marked with a measurement statement³⁷ consistent with specific types and units of measurement.³⁸ Most packaged goods must be sold by volume if liquid or by weight if solid, semi-solid or partly solid and partly liquid. For example, packaged apple juice needs to be sold by volume, because it is a liquid, and can be measured in:

- litres, decilitres or centilitres, or
- millilitres for amounts less than a litre.³⁹

However, some packaged solid goods may be sold by number (count), linear or area measurement, as opposed to weight or volume.⁴⁰ A list of these goods is available on the [NMI's website](#).⁴¹ Where goods are included in this list, traders have the option to choose the type of measurement with which to mark them, for example packaged cucumbers can be sold by weight or number (count).

³⁷ Sections 18JA, 18JB, 18JC and 18JD of the Act and regulation 4.9 of the NTMR.

³⁸ Section 18JE of the Act and regulation 4.13 of the NTMR.

³⁹ Regulation 4.13 in combination with Item 2 of Schedule 6.

⁴⁰ Schedule 4 & 5, NTMR.

⁴¹ This list is issued and maintained under sub-regulations 4.13(4) and (5) of the NTMR.

There are also some packaged goods that must be marked with a specific type and unit of measurement.⁴² For example, honey needs to be sold by weight and can be measured in:

- kilograms for any amount
- grams for amounts less than a kilogram, or
- milligrams for amounts less than a gram.⁴³

Certain other packaged goods do not have to be marked with a measurement statement at all,⁴⁴ for example packaged fish bait.⁴⁵

Case Study D: Packaged sauce – volume or weight?

There is inconsistency in the way sauce products, such as tomato, barbeque and mustard sauce, are marked with a measurement. For example, some products provide a measurement by volume and some by weight. Under the NTMR, liquids must be marked with a volume⁴⁶ and solids and semi-solids must be marked with a weight.⁴⁷ While some sauces could be considered a liquid and others a semi-solid, depending on their viscosity, there appears to be a lack of consistency across similar products regarding the type of measurement used, e.g. volume or weight.

Prescribed types and units of measurement help provide consistency in the measurements used across similar products, and this may make comparisons easier for buyers and sellers. However, the various requirements and exemptions set out across regulations, schedules and lists can be restrictive and confusing, placing an additional burden on businesses. Such regulatory burdens on business may be reduced through the use of industry and/or voluntary codes of practice or allowing individual businesses to determine the unit used.

5.2. Issues

Issues include the limited flexibility for marking goods with units other than those prescribed, and the range of requirements and exemptions creating confusion for businesses and consumers.

A number of regulations or international practices may allow products to be marked with a particular unit of measurement based on a manufacturing process or the inclusion of particular active ingredients. This can cause problems for businesses and confusion for consumers where unit markings do not align with the requirements in the measurement law (e.g. sunscreen). Another example is drained weight (when goods are marked with a net weight for the product plus the liquid it is suspended in, e.g. bocconcini in water, and a drained weight for the product, e.g. the bocconcini). This is an accepted practice in some other countries; however, the current focus of measurement law in Australia is on the overall net measurement.

⁴² A table of these goods can be found in Schedule 5 of the NTMR.

⁴³ Regulation 4.13 in combination with Item 8 of Schedule 5 and Item 1 of Schedule 6 of the NTMR.

⁴⁴ Sub-regulation 4.4(1) exempts packages containing products listed in Schedule 4 from Division 4.3 – Marking of name and address and Division 4.4 – Marking of measurement of the NTMR.

⁴⁵ Sub-regulation 4.4(1) in combination with Item 5.7 of Schedule 4 of the NTMR.

⁴⁶ Sub-regulation 4.13(2) of the NTMR.

⁴⁷ Sub-regulation 4.13(3) of the NTMR.

MEASUREMENT-BASED TRANSACTIONS

Overseas comparison:

Canada prescribes that if packaged goods are a liquid, gas or are viscous, they must be sold by volume measurement and if the goods are a solid, they must be sold by weight.⁴⁸ However, there are various exceptions to this requirement included in the laws, for example honey must be sold by weight.⁴⁹

In the **United Kingdom**, packages containing liquid goods are to be marked with a volume and packages containing other goods are to be marked with a weight, except where the law provides otherwise.⁵⁰ Where a package containing a solid food presented in a liquid medium is marked with the net drained weight, this is treated as the nominal quantity.⁵¹

QUESTIONS

5.2.1. Should there be any changes to the current approach of prescribing the types and units of measurement for marking packaged goods? Why or why not?

In responding to this question you may wish to:

- consider how the requirements for measurement types and units could be made clearer and/or more flexible
- consider any industry practices and procedures that should be recognised, e.g. drained weight
- highlight any costs your business may incur as a result of complying with the current requirements, and
- include any examples of technical barriers to trade that have arisen as a result of a difference between Australian and international approaches.

5.2.2. How do you use measurement statements and other related information in your purchasing decisions? What alternatives could improve the current approach?

6. Testing packaged goods

The current legislation provides two **procedures** for testing whether the content of packaged goods packed to the same measurement (e.g. 1 kg bags of flour) is consistent with the stated measurement.

These testing methods are a system for packages marked with an Average Quantity System (AQS) mark and a system for packages not marked with an AQS mark. The methods have different thresholds for failure and this can cause confusion for business and consumers who may not understand why there is a distinction.

6.1. Average Quantity System (AQS)

Variations of the AQS are used internationally as a method of determining the measurement of prepacked goods. In Australia, goods marked with an AQS mark⁵² must comply with the following rules:

- The weighted average net content in a sample from the production run of packaged goods cannot be less than the stated quantity marked on the packages.
- A small number of packages may exceed a tolerable deficiency.⁵³
- None of the packages in the sample can have more than twice the prescribed tolerable deficiency.

Goods imported from New Zealand are initially tested in accordance with the Australia AQS requirements. Where an inspection lot fails, further testing is conducted in accordance with the New Zealand AQS method⁵⁴ to assess compliance with New Zealand laws.⁵⁵

48 Section 21 of the *Consumer Packaging and Labelling Regulations*, CRC, c 417 (Canada).

49 Subsection 22(1) of the *Consumer Packaging and Labelling Regulations*, CRC, c 417 (Canada).

50 Sub-regulation 8(1) of *The Weights and Measures (Packaged Goods) Regulations 2006* (SI 2006/659) (United Kingdom).

51 Sub-regulation 8(2) of *The Weights and Measures (Packaged Goods) Regulations 2006* (SI 2006/659) (United Kingdom).

52 Section 18JJ of the Act and regulation 4.1 of the NTMR define the AQS mark. It must be in the form set out in Schedule 3 of the NTMR.

53 'Tolerable deficiency' is the deficiency in the quantity of product permitted in a package for the AQS method. In Australia the tolerable deficiency appropriate for the nominal quantity of the packaged products is determined using the table in regulation 4.36 of the NTMR.

54 Packaged products in New Zealand are tested in accordance with a variation of the AQS procedure. The procedure is set out in Part 6A of the *Weights and Measures Regulations 1999* (New Zealand).

55 Australia is obligated under the *Trans-Tasman Mutual Recognition Act 1997* to accept goods imported from New Zealand where they are compliant with New Zealand law.

The requirements for Australia's current AQS procedure⁵⁶ are specified in the measurement law and are based on the 2004 version of the International Organisation of Legal Metrology's Recommendation 87. The AQS method provides an effective way of checking large production runs of packaged goods, however it does not enable testing of lot sizes less than 100.⁵⁷ This places limitations on the compliance checking of packaged goods when, for example, they are imported into the country in small numbers.

Case Study E: Testing small numbers of packages marked with an AQS mark

While inspecting an importer's range of prepacked foods, a trade measurement inspector identifies what looks to be a potentially significant shortfall in some packaged goods that warrants further testing. The goods are marked with an AQS mark and so will need to be tested in accordance with the AQS method. However, the 'inspection lot' size required by the NTMR is 100 packages and the importer is only importing 60. Consequently, the inspector cannot conduct the testing strictly in accordance with the AQS sampling procedure.

6.2. System for packages not marked with an AQS mark

All other packaged goods (that is, those without an AQS mark) are tested using a procedure⁵⁸ based on the uniform trade measurement legislation in force in the States and Territories before 2010. Under this procedure:

- The average content in a sample of packaged articles of the same kind and measurement cannot be less than the stated quantity marked on the packages.
- No individual packaged article within that sample can have a shortfall greater than 5 per cent of the stated quantity.
- The sample size used is 12 or more packages; however, there may be circumstances where a smaller sample size is acceptable.

Packaged goods that are not packed to the same measurement but instead packed as single packages (referred to as random weight or single article) are marked with individual measurements (e.g. 0.548 kg of mince). The relevant requirement for these goods is simply that the actual content of the packaged good is not less than what is stated on the package.

6.3. Issues

Some of the issues relating to testing packaged goods include having two different test methods with different thresholds for failure and legislated test procedures that, as they are difficult to update quickly, may not keep pace with market trends or international best practice. However, the existence of two test procedures for goods packed to a consistent measurement does provide some flexibility to business to choose the method of packing.

The inclusion of the AQS requirements in the legislation has led to issues and delays in updating these procedures to keep pace with international trends. This has resulted in the requirements in Australia being different from those used by our overseas trading partners. In some instances, this has the potential to create a barrier to trade as products that may be compliant in the country in which they are packed may be found to be non-compliant with the Australian requirements.

QUESTIONS

6.3.1. Should there be any changes made to the current testing methods for packaged goods? Why or why not?

In responding to this question you may wish to highlight:

- the benefits, issues and costs of maintaining two approaches for testing packaged goods packed to a consistent measurement
- perceived benefits, issues and costs of greater international harmonisation of Australia's AQS procedures, and
- some of the benefits, issues and costs that exist with the current single article testing method.

⁵⁶ The requirements for AQS sampling and testing for the purposes of Subdivision 3-C of Division 3 of Part VI of the Act are included in Subdivision 1 of Division 4.7 of the NTMR and the 'Sampling and Test Procedures for Prepackaged Products' determined by the Chief Metrologist under section 19Q subsections (1)(a) and (b) of the Act.

⁵⁷ The AQS thresholds are outlined in regulation 4.34 of the NTMR.

⁵⁸ The requirements for sampling and testing of packages not marked with an AQS mark for the purposes of Subdivision 4-B of Division 4 of Part VI of the Act are included in Subdivision 2 of Division 4.7 of the NTMR and the 'Sampling and Test Procedures for Prepackaged Products' determined by the Chief Metrologist under section 19Q subsections (1) (c), (d) and (e) of the Act.



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