

Review of Part 4 of the National Trade Measurement Regulations

Options Paper

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About the Options Paper

The Government is seeking feedback on the options raised in this paper. The paper is not the Regulatory Impact Statement.

If readers would like to refer to the regulations when considering the options proposed, details can be found on the ComLaw website:

<https://www.comlaw.gov.au/Details/F2015C00010>.

We encourage those who have a view on the option papers to make a written submission by 25 June 2017. Submissions can be made at the website

<https://consult.industry.gov.au/packaging-review-team/national-trade-measurement-regulations-2009-options-paper/>

Executive Summary

Part 4 of the National Trade Measurement Regulations (NTMR) 2009 determines how a measurement mark, the quantity of a product in a package, should be displayed on a product. The regulations are prescriptive, specifying the size, orientation and position of the measurement mark. The options proposed in this paper explore whether it is desirable to move away from this model to a more flexible principles-based approach.

Industry responsible for producing fast moving consumer goods, such as cosmetics, food and beverages, generally support a change in the regulations. For example, sometimes there is a need to relabel imported products to satisfy prescriptive trade measurement regulations, mainly for products imported from the EU. In 2015, A\$958 million and A\$734 million of alcoholic beverages, and perfumery and cosmetics (excluding soap) respectively were imported into Australia from the EU.¹ More flexible regulation would remove the need to relabel, leading to an expected decrease in costs of imported European products. Furthermore, removing the need to relabel could increase Australia's attractiveness as an import market leading to new products entering Australia and increased consumer choice.

Market research conducted as part of this review evaluated the response of consumers to possible changes to the regulations and assessed the relative value of the measurement mark to other label based information. Overall, consumers valued the measurement mark, but allowing greater flexibility in the size, orientation and position of the measurement mark was acceptable. Consumers showed little passion about the measurement mark, indicating that when they wanted to use the measurement mark they would make the effort to find it, or, if it was hard to find, they would choose an alternative.

The paper has three options:

Option 1: Maintain status quo.

Option 2: Update the wording in Part 4, with minor regulatory amendments to clarify the provisions, and provide an exemption for cosmetics to Division 4.4 of Part 4.

Option 3: Amend Division 4.4 in line with a principles-based approach, such that regulations stipulate that the measurement mark has to be legible and prominent.²

Option 3 is currently the preferred option. It offers the benefits of simplifying the regulations, providing greater flexibility to industry, whilst maintaining the provision of product information to consumers.

¹ Department of Foreign Affairs and Trade, *Composition of Trade Australia 2015*, p123 <http://dfat.gov.au/about-us/publications/Documents/cot-cy-2015.pdf>

² The principles based approach will be broadly in line with the requirements for legibility in the Australia New Zealand Food Standards Code: Standard 1.2.1—24 <https://www.legislation.gov.au/Details/F2017C00307>

1. Objective

The objective of this paper is to seek views on options for improving the labelling requirements in Part 4 of the NTMR. The Department of Industry, Innovation and Science (DIIS) has previously consulted on the operation of these regulations with consultations and market research in November and December 2015. Further information about the consultation is provided at Appendix A.

Reforming Part 4 of the NTMR 2009 is part of the Government's regulation reform agenda. The agenda, which includes the National Business Simplification Initiative, aims to enhance innovation and improves the productivity and competitiveness of Australian industry. It seeks to improve regulation to ensure that it does not impose unnecessary costs on individuals, businesses or the wider community.

This will be achieved by:

- Ensuring businesses that sell goods by measurement, or that manufacture, pack, import or sell pre-packaged goods have flexibility in the presentational requirements and placement of the measurement mark on pre-packages without affecting consumer confidence and their needs to acquire this information.
- The savings provided to business compliance means businesses can invest their time and resources elsewhere, such as growing their business, research and development and provide more economical products.
- Maintaining confidence in Australia's regulatory system for measurement markings and suitability for the Australian market, whilst accommodating the global economy to facilitate trade.

2. Background

The national trade measurement framework, which includes the NTMR 2009³, underpins the trust between strangers, ensuring they have confidence that they are receiving what they paid for. This trust and confidence is essential for a well-functioning economy, however, it is important to ensure that these regulations are optimal.

The purpose of the NTMR 2009 is to correct an information asymmetry, striking a balance between consumer protections and business confidence at least cost. In doing so, the NTMR 2009 should aim for best practice regulation and facilitate international trade. This review is about getting the balance right.

The Government has undertaken a deregulation agenda focused on improving regulation to ensure that it does not impose unnecessary costs on individuals, businesses or the wider community. Additionally, under the principles for clearer laws, including regulatory reform, policy makers need to ensure that:

1. All implementation options are considered with legislative or regulatory action as an option only when it can be justified on the basis of a cost-benefit analysis.
2. Complexity is reduced.
3. Laws or regulations are no more complex than is necessary to give effect to policy.
4. Those affected by the regulatory changes understand how the laws or regulations apply to them.
5. The clarity of the proposed law or regulation is continually assessed – from policy development through to consideration by the rule-maker.

The labelling requirements laid out in Part 4 of the NTMR 2009 have been identified as an area of regulation that is unnecessarily complex and could be reformed to reduce costs to business. Part 4 of the NTMR 2009 predominately provides rules related to measurement marking on packaging (i.e. the 330 ml marking on a can of soft drink). It describes how the name and address of the packer and the measurement mark should be displayed, what expressions are prohibited on the package and details for consumers to check that the product matches the weight marking.

Industry stakeholders have indicated that Part 4 of the NTMR 2009 does not meet the requirement for minimum effective regulation because it is overly prescriptive, in setting out requirements for font size, for example. Further, it is argued that Part 4 could be reformed to accommodate:

- advances in technology
- other regulatory changes such as unit pricing which might make Part 4 less pertinent

³ <https://www.legislation.gov.au/Details/F2009L03479>

- international labelling requirements to promote trade between Australia and countries exporting to Australia.

In undertaking this review the Australian Government is keen to understand the impacts that regulatory changes may have on consumers, businesses and trade. In particular, the review is examining the effect of amending the NTMR 2009 to allow greater flexibility of where measurement markings are placed.

2.1 The regulatory framework

The NTMR 2009 prescribe the particulars of the national (Commonwealth) system of trade measurement regulation provided for in the 2008 amendments to the *National Measurement Act 1960* (the Act). Detail of the regulatory framework is at Appendix B.

2.2 Core provisions of Part 4

Division 4.3 of Part 4 sets out the first of the two core requirements for packaging in the NTMR 2009. It requires a package containing a pre-packaged product to be marked with the name and address of the person who packed the product (or on whose behalf it was packed). It also sets out certain other rules and exemptions with respect to the marking of names and addresses. Division 4.4 of Part 4 sets out the second of the two core requirements. It requires a package containing a pre-packaged product to be marked with a statement of the measurement of the product (a measurement marking). It also sets out a number of very specific rules with respect to measurement markings (including rules for particular products).

2.2.1 International standards and guidance

Part 4 is guided by the recommendations of the International Organization of Legal Metrology (OIML), in particular recommendation *R79: Labelling requirements for pre-packaged products*.⁴ OIML's aim is to harmonise regulations and metrological controls applied by its 62 full member states and 64 corresponding members. Australian regulations are not an exact replication of OIML's recommendation, with the recommendations adapted to meet the needs of Australian businesses and consumers. It has been suggested that the adaptability of OIML's recommendation has led to different member countries enacting and enforcing the OIML recommendations to different degrees.

Codex Alimentarius is another relevant international standard that relates to Australia's trade measurement regulations. Codex Alimentarius is an international body for food standards which was established by the World Health Organization and the Food and Agriculture

⁴ https://www.oiml.org/en/files/pdf_r/r079-e97.pdf

Organization of the United Nations. The CODEX STAN 1-1985: General Standard for the Labelling of Pre-packed Foods⁵ relates to this review; however, the standards only cover food labelling and do not extend to other product types.

2.2.2 Domestic considerations

Interactions between the NTMR 2009 and other domestic regulations need to be taken into account when considering change to ensure a consistent approach to labelling across regulation and to avoid redundancy.

The role that unit pricing plays in providing the consumer with value for money information is an important consideration.

The Australian Competition and Consumer Commission (ACCC) is a statutory authority whose role is to enforce the *Competition and Consumer Act 2010*.⁶ The Unit Pricing Code [*Trade Practices (Industry Codes — Unit Pricing) Regulations 2009*]⁷ is a mandatory industry code under the *Competition and Consumer Act 2010*. The implementation of this code to the NTMR 2009 is discussed further in section 3.2.3 and at Appendix B.

The *Australia New Zealand Food Standards Code*⁸ includes sections on the labelling of food products. The code's labelling requirements deal with issues only relevant to food products such as listing of ingredients, nutrition information and allergen declarations. There is some overlap with the NTMR 2009 concerning name and address labelling.⁹

⁵ <<http://www.fao.org/docrep/005/Y2770E/y2770e02.htm>>

⁶ *Competition and Consumer Act 2010* <<https://www.legislation.gov.au/Details/C2011C00003>>.

⁷ <<https://www.legislation.gov.au/Details/F2009L02457>>

⁸ Individual standards in the *Australia New Zealand Food Standards Code* can be accessed on the Federal Register of Legislation via <<http://www.foodstandards.gov.au/code/Pages/default.aspx>>.

⁹ Ibid.

3. Statement of the problem

Industry stakeholders have indicated that Part 4 of the NTMR 2009 is overly prescriptive and inflexible. The regulations are complex and it can be a difficult process to determine the correct requirement for measurement marking on a given package. Key considerations, in line with the principles for clearer regulations, is that the current regulations are:

- not flexible to deal with change, such as technological changes to measurement of products, for example, aerosols;
- overly prescriptive and the labelling requirements of pre-packaged goods are difficult for industry to make sense of the regulations and use the correct presentational requirements for the measurement mark;
- inconsistent with international requirements for some products such that business compliance costs are increased due to relabelling expenses.

This section discusses the three key areas where concerns have been raised about the regulations. These are: structure, presentation requirements; and redundancy and inconsistency of wording.

3.1 Structure of regulations

Part 4 of the NTMR 2009 contain Divisions, Subdivisions, regulations, subregulations and schedules. Figure 1 below shows the structure of Part 4 of the NTMR 2009 at the Division and Subdivision level, excluding the detail of NTMR 2009 and subregulations. At this level, Part 4 of the NTMR 2009 is logical and does not merit major change.

National Trade Measurement Regulations 2009

Part 4: Packaging

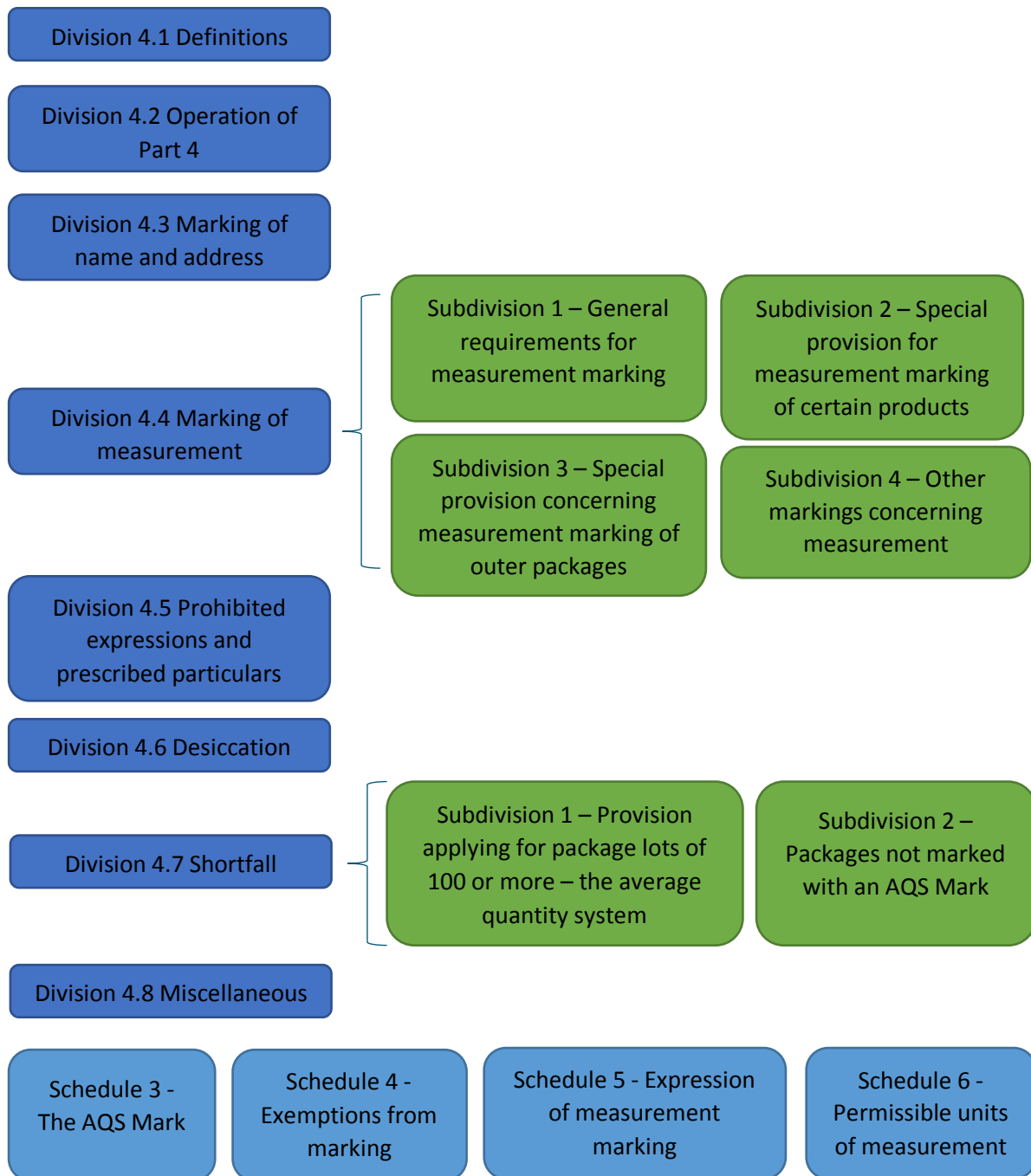


Figure 1: Schematic of Part 4 of NTMR 2009

Part 4 of the NTMR 2009 is mapped at a more detailed level at Appendix B (Figure 3). This map has been constructed on the premise that the core regulations, 4.7 and 4.9, are those relating to the marking of the address on the packages, and the requirement to mark

measurement. These regulations are supported by other regulations, which provide guidance on the presentation and detail of the label.

At this more detailed level the arrangement and interactions of the regulations and subregulations is overly complex. Particularly confusing are the exemptions, exceptions or special considerations. In Figure 3 (at Appendix B), around half of the regulations contain conditional statements. To complicate things further, Schedule 4 provides additional exemptions from marking.

The regulations regarding measurement marking are complex to negotiate.

We market a very wide range of product types, sizes and package configurations, as such we consult these regulations regularly and find them both onerous and complex to determine the correct measurement marking for a given package. - Industry

Further, some stakeholders have questioned whether products that are exempt in Schedule 4 should be subject to the full effect of the NTMR 2009 in the event they are labelled with a measurement mark.

...[A] cosmetic pack which may be a nail polish bottle (containing 12 mL of product) is exempt from marking as it is less than 15 mL or 15 g (Schedule 4 (5) (3)). However if the pack does disclose its contents as 12 ml- on the back of the pack its exemption is negated by Regulation 4.4 (3) of the regulations and it is required to comply with the full requirements of Divisions 4.3 and 4.4 i.e. put the unit measure on the main display panel and potentially increase its height. In other words it is permissible to not declare the nail polish bottle volume but if a company in the interests of consumers does declare it, then they are required to meet further provisions of the Act and Regulations that they have already received an exemption from Clause 4.4 – Industry Association

3.2 Presentation requirements

Industry stakeholders support a move to simpler more flexible requirements for the placement and appearance of measurement information. However, consumer interest groups emphasise that simplification should not come at the expense of prominence and visibility of information, particularly for vulnerable groups such as the visually impaired and the elderly. They argue that increased flexibility in placement of measurement mark(s) on products would lead to information asymmetry, negatively impacting consumers.

3.2.1 Industry preferences

Industry stakeholders argue that the presentation requirements of Part 4 of the NTMR 2009 are costly and onerous for industry, in particular the personal cosmetics industry.

A key requirement of the NTMR 2009 is that the measurement mark of a product should be on the principal display panel, which is the front of the product as viewed by consumers when the product is displayed for sale. The labelling of cosmetics in other jurisdictions, in particular in Europe, results in many imported cosmetic products requiring over-labelling to meet Australia requirements. Industry argues that over-labelling results in costs to industry without a demonstrated benefit to consumers.

Industry stakeholders also argue that Part 4 of the NTMR 2009 is inconsistent with minimum effective regulation because it is overly prescriptive in setting out requirements for font size and appearance.

Industry stakeholders have stated that Australian presentational requirements for measurement marking should be sufficiently flexible to accommodate presentation requirements with our major trading partners. This would reduce costs for designing labels or relabelling for multiple jurisdictions. Greater flexibility in the placement of the measurement mark would also create consistency with other domestic labelling requirements, like those that apply under the Australia New Zealand Food Standards Code.¹⁰

Industry stakeholders also recommend that the NTMR 2009 be updated in line with improved technology with regard to measurement testing. This includes how information is accessed by consumers, whether it be digitally or through the increased use of unit pricing in large supermarkets.

Industry stakeholders argue that placement of a measurement mark on fast moving consumer goods is superseded by the use of unit pricing [the Trade Practices (Industry Codes – Unit Pricing) Regulations 2009 which came into effect on 1 July 2009]. On the other hand, consumer interest groups note that unit pricing only applies to retailers that voluntarily enter the scheme or retailers who have a floor space of greater than 1000 square metres.

3.2.2 Consumer concerns if the measurement mark was not on the front

Consumers have three high-level concerns if the measurement mark was to move:

1. difficulty in locating the measurement mark
2. potential for dishonest behaviour by the manufacturer

¹⁰ Individual standards in the *Australia New Zealand Food Standards Code* can be accessed on the Federal Register of Legislation via <http://www.foodstandards.gov.au/code/Pages/default.aspx>.

3. difficulty in using the measurement mark.

This is a finding of the two surveys conducted in 2015; the first survey was part of the market research conducted by ORIMA Research (ORIMA); the second online survey was hosted by DIIS during the public consultation. Analysis of the ORIMA market research is discussed at Appendix A.

Both surveys included one question that allowed the option to place a comment about concerns with a change in the measurement mark.¹¹ In the ORIMA survey, only 53 per cent of people chose to respond to this question (the other 47 per cent selected the *no concerns* response option) whereas in the online survey 85 per cent of people chose to respond.

The top concerns in both surveys related to the difficulty in locating the measurement mark if it was not on the front of the pack. The following statements summarise the concerns raised in ORIMA's survey:

- Having to pick up or turn over if not on front; having to handle product to find it (sanitary issues, breakages, messy shelves).
- Can't easily find the information; not as visible, unclear, not seen quickly, or not seen at a glance.
- Takes or wastes additional time and effort if the consumer always has to look for it.

"Where would it be? If not on front, and size was not mandated, could be difficult to find."

The second band of concerns related to the potential for dishonest behaviour by manufacturers. However, not as many respondents raised this concern. The following statements summarise the concerns:

- Hiding a reduction in pack weight; reducing pack size without customers noticing; the packaging could mislead; the consumer might not be able to tell how much is in a pack.
- Manufacturers would try to hide a change; rip off customers (reduce size but maintain price); concerns with transparency.

"Like most other people I would take much longer to complete my grocery shopping as I would have to look all over packs to find the measurement mark. I also suspect that this is a ruse by manufacturers to constantly

¹¹ The question was 'If the measurement mark was not on the front of the pack, what, if any, concerns would you have?' ORIMA's survey had a total number of n=1593 participants. The department's survey had n=593 participants.

lower the weight or volume of products but continue to charge the same or a greater price for less product.”

The third band of concerns related to the difficulty in using the measurement mark. This possibly occurred because the respondents largely acknowledged that it would be somewhere on the packet and the *difficulty* aspect was captured in the *difficulty in finding the measurement mark* response. A summary of the response statements are as follows:

- The change would make it harder to compare products or brands.
- The consumer would not be able to work out value for money.
- The consumer would not know if the correct weight has been given.
- The consumer not able to work out if there is the right amount needed (such as for cooking or recipes).

*“I couldn’t easily compare products on the supermarket shelf at a glance.
Consistent placement and size of measurement mark is needed.”*

3.2.3 Influence of unit pricing

The prescribed location and size of the measurement mark are claimed to be important for determining value in purchasing decisions. However, the relatively widespread use of unit pricing by grocery retailers raises questions about the importance of the measurement mark for consumers to make informed choices about value for money.

Unit pricing is the display of a price of goods per unit of measure (i.e. per 100 grams, per kilogram, per litre or per item). Unit pricing has been mandatory since 2009 for store-based grocery retailers and online grocery retailers, though other grocery retailers can voluntarily opt-into the scheme.

Unit prices must be displayed in dollars and whole cents. The unit price for a grocery item must also be:

- prominent – that is, it must stand out so that it is easily seen
- in close proximity to the selling price for the grocery item
- legible – it must not be difficult to read
- unambiguous – the information must be accurate and its meaning must be clear.

The Government’s announcement to implement a mandatory unit pricing scheme was motivated by:

- a desire to support Australian households through the potential to save time and money;¹² and
- the objective of increased price competition in the grocery market.¹³

Unit pricing supports greater transparency where products are packaged in different sizes within the same product category. The desire to support Australian households through the potential to save time and money, as well as achieving the objective of increased price competition together persuaded the Government to support a mandatory unit pricing scheme.

The ACCC released a survey of unit pricing in October 2010. The survey used data collected by mystery shoppers who observed the application of unit pricing in a sample of 383 supermarkets and 17 online grocery retailers. The ACCC survey found compliance rates for prominence (91 per cent), proximity (94 per cent), legibility (95 per cent), and unambiguity (90 per cent) with an average compliance rate of 93 per cent.

A post implementation review of unit pricing in 2012 determined that there were not any discernible price increases that could be attributed to its introduction. The review also concluded that unit pricing did not require a prescriptive approach to ensure that unit prices are easy to notice, read and use.

Unit pricing does have some limitations. As referred to earlier, it only applies to shops of a certain type or over a certain size. Further, the unit price label is on the shelf and not the package.

3.3 Simplification of wording within regulation

The NTMR 2009 contains redundant, inconsistent use of words, unnecessary conditions, and unclear passages. There is a consensus amongst stakeholders that the NTMR 2009 could be improved by remedying these issues.

The following example shows duplicative and inconsistent references to describe how labels should appear on products. The current wording in the NTMR 2009 refers to some principles for marking names and addresses on packages (regulation 4.7), the requirement to mark measurement (regulation 4.9) and the size of characters in measurement marking (regulation 4.12).

¹² The Hon Chris Bowen MP (2009), 'Australian consumer to save with unit pricing', Media Release No.001, 8 January 2009.

¹³ The Hon Chris Bowen MP (2008), 'Rudd Government releases its preliminary action plan in response to the ACCC's Grocery inquiry', Media Release No.065, 5 August 2008.

Regulation 4.7 Marking of name and address on packages

(2) The marking must be:

- (a) readily visible and legible
- (b) appropriate to enable the person to be identified and located.

Regulation 4.9 Requirement to mark measurement

(2) The statement must be marked in a way that will be:

- (a) clear; and
- (b) conspicuous; and
- (c) readily seen and easily read when the product is exposed for sale in the manner in which it is supposed to be exposed for sale.

Regulation 4.12 Size etc. of characters in measurement marking

(1) The characters used in a measurement marking must be:

- (a) clear; and
- (b) stamped, printed, embossed, marked by an approved printing device or handwritten.

(2) The characters must:

- (a) be stamped or printed in a colour that provides a distinct contrast with the colour of the background, and be of at least the minimum height required by the table in subregulation (3); or
- (b) be stamped or embossed, and be of at least 3 times the minimum height required by the table in subregulation (3); or
- (c) be marked by an approved printing device in characters at least 3 mm high; or
- (d) be legibly handwritten if permitted by subregulation (5).

It is a matter of interpretation as to how *readily visible and legible* in Regulation 4.7(2)(a) differ from *clear*, *conspicuous*, and *readily seen and easily read* in Regulation 4.9(2).

Additionally, when it is stated in Regulation 4.9(2) that a statement should be *clear*, *conspicuous*, and *readily seen and easily read*, it is not obvious why the original drafters also included Regulations 4.12(1)(a) and 4.12(2)(a) that refer to the same detail. This contributes to the complexity of the regulations.

4. Options

DIIS considers that there are three policy options to be considered by the Government in deciding whether to reform Part 4 of the NTMR 2009:

Option 1: Maintain status quo.

Option 2: Update the wording in Part 4, with minor regulatory amendments to clarify the provisions, and provide an exemption for cosmetics to Division 4.4 of Part 4.

Option 3: Amend Division 4.4 in line with a principles-based approach, such that regulations stipulate that the measurement mark has to be legible and prominent.¹⁴

Please note that a range of quotes from submissions received to date are referenced throughout the Options section. Due to confidentiality, only the industry sector is attributed to the quote.

¹⁴ The principles based approach will be broadly in line with the requirements for legibility in the Australia New Zealand Food Standards Code: Standard 1.2.1–24 <https://www.legislation.gov.au/Details/F2017C00307>

4.1 Option 1 – Status quo

Under Option 1 there will be no changes to the regulations.

Choosing Option 1 will maintain the status quo and will not address the concerns raised by stakeholders with the regulations. This option is presented to allow no action to be taken if more substantial change is considered unwarranted. It also forms a baseline for comparison with Options 2 and 3.

4.2 Option 2 – Cosmetics as an exception to division 4.4 part 4

Option 2 includes an exclusion allowing cosmetic products to position the measurement mark anywhere on the package. This change reflects two considerations.

Firstly, when consumers were surveyed, the value of front of package measurement information for non-food items rated very low. Market research conducted by ORIMA Research on behalf of the DIIS (Appendix A) demonstrated that consumers do not consider the measurement mark among the most useful type of information on the front of packages. The measurement mark ranked equal sixth out of eight different types of information that could be placed on the front of *non-food products* (9 per cent respondents). A safety claim (20 per cent respondents) ranked the highest, followed closely by allergen information (16 per cent respondents).

Secondly, the costs of placing the measurement label on the front of packages is greater in the cosmetics sector. Products imported from overseas jurisdictions (including the EU) that are flexible towards back of package labelling are currently required to be relabelled to meet Australian requirements.

The proposed changes would mean that for cosmetics, the measurement mark has to be legible and prominent. A discussion on the wording for a principles-based approach to ensure consistent language with other domestic regulations is included at Appendix B.

Under Option 2 there will also be changes to Part 4, with minor regulatory amendments to clarify the provisions. Where regulations are no longer relevant, are out dated, or have an element of duplication, they will be removed.

Amendments will also be proposed to ensure Part 4 aligns with other national and international regulatory frameworks. The key areas for alignment will be between the NTMR 2009, the Australia New Zealand Food Standards Code and the Commerce (Imports) Regulations 1940. The definitions listed in regulation 4.1 of the NTMR 2009 will align with section 1.1.2—2 of the Food Standards Code. The Commerce (Imports) Regulations 1940 are also under review and inconsistencies include the requirement of *net* on imported packages, which is not a prescribed condition of the NTMR 2009. Differences also exist in the list of exemptions between the two regulations: Commerce (Imports) Regulations 1940 Fifth Schedule (goods that are not pre-packed articles) and the NTMR 2009 Schedule 4 (exemptions from marking).

Option 2 will also contain minor technical amendments to the NTMR 2009 that correct errors in Part 3 and Schedule 2.

4.2.1 Proposed changes

Changes to Part 4 of the NTMR 2009 under Option 2 will be made to provide more consistency with national and international standards and are proposed to include the following based on extensive stakeholder consultation and feedback. These are listed in Table 1 below.

Regulation	Proposed Change
Division 4.1 – Definitions	
4.1 Definitions for Part 4	The definitions in regulation 4.1 will align with the terms used in the Australia New Zealand Food Standards Code.
Division 4.2 – Operation of Part 4	
4.4 Exemptions from marking requirements (name, address, measurement)	Subregulations (1) and (2) will be redrafted to simplify the language.
4.6 Exemptions for certain inner and outer packages	Will be redrafted to simplify the language and moved to subdivision 3 - Special provision concerning measurement marking of outer packages.
Division 4.3 – Marking of name and address	
4.7 Marking of name and address on packages	Subregulation (2)(a) will be harmonised with the Australia New Zealand Food Standards Code. The words “readily visible” will be removed and “prominent” will be added (see Regulation 4.9 below). Subregulation (2)(b) will be removed as it serves the same purpose as subregulations (2)(a) and (3) – the ability to identify the packer. Language can be harmonised to mirror that in subregulation 4.9(2).
4.8 Exemptions – packaged seed and imported pre-packaged products	Subregulation (2) - the definition of <i>agricultural seed of a prescribed variety</i> will be moved to regulation 4.1 - definitions for Part 4.
Division 4.4 – Marking of Measurement	
4.9 Requirement to mark measurement	Subregulations (2)(a-c) will be harmonised with the Australia New Zealand Food Standards Code. The words “clear”, “conspicuous”, “readily seen” and “easily read” will be changed to “legible” and “prominent”.

Regulation	Proposed Change
4.10 General position of measurement marking	Exclude <i>cosmetic products</i> from the requirement to be marked on the principal display panel. Exemptions will be moved to Schedule 4 – Exemptions from marking.
4.12 Size etc. of characters in measurement marking	Subregulations (1)(a), (2)(a) and (2)(b) will be removed as the requirements that the characters are <i>clear and stamped or printed in a colour that provides a distinct contrast</i> duplicate regulation 4.9.
Subdivision 3 – Special provision concerning measurement marking of outer packages	
4.23 – 4.25	Regulations 4.23-4.25 will be streamlined and duplication will be removed to provide more clarity.
Subdivision 4 – Other markings concerning measurement	
4.26 Unit price marking – retail sales of particular foods by mass	Simplification and consolidation of subregulations (1) and (2) - listed foods can be defined as “pre-packed grocery items sold by weight” and items can be defined in regulation 4.1. The language used in subregulation (3) will be harmonised with the Australia New Zealand Food Standards Code.
Division 4.5 – Prohibited expressions and prescribed particulars	
4.29A Prescribed particulars for register	Move the regulation to division 4.8 (Miscellaneous) that discusses the application for permits to sell certain articles.

Table 1. Proposed policy changes to update Part 4 of the NTMR 2009 under Option 2.

As noted earlier, changes to Part 3 and Schedule 2 of the NTMR 2009 are included in Option 2. These are included in this option as they fix errors in the NTMR 2009 without any other potential implications (Table 2).

Number	Provision	Amendment	Description
1	Reg. 3.44	Remove regulation 3.44.	Regulation 3.44 appears in error as a duplication of regulation 3.59. The amendment seeks to remove the duplicative error in the regulation.

Number	Provision	Amendment	Description
2	Sch. 2, Item 6.10	Remove Item 6.10.	<p>The national measurement framework does not allow for servicing licences of legal measuring instruments as they cannot be verified for trade use.</p> <p>The amendment seeks to correct the error in Schedule 2.</p>
3	Sch. 2, Item 14 Sch. 2, Item 14.1	Remove Item 14 and Item 14.1.	<p>The national measurement framework does not allow for servicing licences of utility meters.</p> <p>The amendment seeks to correct the error in Schedule 2.</p>

Table 2 - Changes to Part 3 and Schedule 2 of the NTMR 2009

4.2.2 Industry impact

Industry associations claim that many pre-packaged imported consumer goods need to be relabelled due to the prescriptive requirements enforced by the NTMR 2009. Relabelling costs include design, unpacking, repacking and re-sealing goods, plus additional costs associated with damages during the relabelling process.

“The lack of flexibility for unit measure placement on fully imported otherwise compliant pre-packaged fast moving consumer goods is an unnecessary impediment to trade and a cost burden to industry.” – Industry association

“The NTMR presents a barrier to trade, especially in relation to products imported from the EU.” – Industry association

Accord is the peak national body for the hygiene, cosmetic and the speciality product industry. They have raised concerns that the current regulations present a barrier to trade, especially in relation to selected products imported from the EU that place the measurement mark on the back of cosmetic and personal care products.

Accord’s members estimated that 5 per cent of products imported from the EU did not have the measurement mark on the principal display panel. However, 24 per cent of the products that complied with the front of package requirement were below the font height required.

Accord and its members seek increased flexibility in unit measurement placement on cosmetics sold in Australia as these further costs are a burden to industry, stifling innovation and impeding trade.

According to trade data from the Department of Foreign Affairs and Trade¹⁵ perfumery and cosmetic¹⁶ imports were valued at AU\$1.93 billion in 2015, ranking 36th by value and 0.7 per cent of total merchandise imports. Exports are less than half this amount and were valued at \$521 million, ranking 58th by value (0.2 per cent share), with most exports going to New Zealand (see Appendix C for further trade data).

Perfumery and cosmetic imports are the 8th most imported commodity from the EU valued at \$734 million in 2015 with a growth of 14.7 per cent from the previous year. Therefore, there is a large market that has the potential to benefit through reform of Part 4 of the NTMR 2009.

Industry was supportive of changes to simplify the NTMR 2009 and use more consumer friendly language.

“More consumer friendly language would be beneficial, understanding that regulations should be written in a manner that makes them legally binding.”

- Food manufacturer

Feedback during the consultation process also recognised the need for better harmonisation between national and international standards due to inconsistencies between the NTMR 2009 and other legislation.

“There is a very strong recommendation for greater consistency of all regulations that deal with the labelling of food products.” – Food

manufacturer

However, the main focus of Option 2, an exclusion for the cosmetic sector would not address the inflexibility of the regulation for other industry sectors. Exclusions or exemptions should be used only where a general rule does not satisfactorily represent the situation as a whole.

4.2.3 Consumer impact

Consumer groups have made it clear that their view is that the measurement mark should be present on the principal display panel where consumers can easily locate the mark.

¹⁵ Composition of Australia Trade - <http://dfat.gov.au/about-us/publications/Documents/cot-cy-2015.pdf>

¹⁶ 553, excl. soap - The Standard International Trade Classification SITC.

However, there was support from consumers and consumer groups to update and make at least minor changes to simplify the NTMR 2009 and remove duplications and inconsistencies.

“Clear simple explanations and wording.” - Private individual

“Use of simpler language – plain English.” - Private individual

Analogous to the feedback from industry, consumer groups also recognised the need for better harmonisation between national and international standards due to inconsistencies between the NTMR 2009 and other legislation.

“Product regulation should be consistent and avoid duplication and overlap.” – Consumer association

“The consistency and uniformity of the Part 4 requirements benefits for all stakeholders including Australian industry and consumers.” – Consumer association

4.3 Option 3 – Principles-based approach

Option 3 offers a principles-based approach to be applied to the measurement mark for all goods, rather than just cosmetic products as in Option 2. Also, greater use of Schedules 4, 5, and 6 is proposed. This will allow consolidation of exemptions, exemptions from marking (Schedule 4), expression of measurement marking (Schedule 5), and permissible units of measurement (Schedule 6).

A key aspect of Option 3 is that labels currently compliant with the NTMR 2009 will remain compliant. Hence, no change to the labelling information on packaging will be required as a result of this regulatory change.

The most significant change as part of Option 3 is that the measurement mark need only be presented as *legible* and *prominent*. Regulations specifying the size, position, and orientation will be removed. This proposed change will allow industry greater flexibility in how the measurement mark is displayed.

Although Australian consumers consider the measurement mark an important part of product labelling warranting government intervention (68 per cent of respondents), placement of the measurement mark on the front of food packages ranked only fifth out of eight different types of information that could be placed on the front of packages (11 per cent respondents). Country of Origin labelling (CoOL) ranked the highest (21 per cent respondents), followed by a use by date (16 per cent respondents).

A consideration in proposing Option 3 is the use of unit pricing in grocery shopping, discussed in section 3.2.3. Unit pricing demonstrates that a principles-based approach to labelling can work satisfactorily. It also provides a better source of information to the consumer when determining value for money of a product, as compared to the measurement mark.

Taking a principles-based approach to redrafting NTMR 2009 should assist with simplification and clarification of the regulations. For example, instead of making exemptions by products, i.e. allowing handwritten labels for cakes sold at cake stalls, it may be possible to state the principle behind the exemption and make it apply more broadly. For instance, allowing handwritten labels on any products provided that the measurement mark meets the core requirements of NTMR 2009.

4.3.1 Proposed changes

Option 3 removes certain mandated requirements, and replaces them with the principles for the operation of the regulation. The majority of content in regulations 4.11 and 4.12 that define the set-out and form and size of characters in measurement marking, respectively, will be revoked. Guidelines will be developed to provide business with best practice

examples for meeting international requirements, including those that require front of pack labelling.

Regulation	Proposed Change
Division 4.2 – Operation of Part 4	
4.4 Exemptions from marking requirements (name, address, measurement)	Subregulation (3) will be moved to Schedule 4 – Exemptions from marking.
4.5 Exemptions for packages containing paper	This exemption should be transferred to schedule 4 - Exemptions from marking.
4.6 Exemptions for certain inner and outer packages	This exemption should be transferred to schedule 4 - Exemptions from marking.
Division 4.3 – Marking of name and address	
4.8 Exemptions – packaged seed and imported pre-packaged products	Exemptions to be relocated to Schedule 4 to provide better clarity and organisation.
Division 4.4 – Marking of Measurement	
4.10 General position of measurement marking	The regulation will be repealed.
4.11 Set-out and form of measurement mark	Subregulations (1)(a-d) will be removed under option 3 that dictate the position of the measurement mark with respect to the name or brand, other graphical matter and the limits of the package. Subregulation (2) will be relocated. Subregulation (3) that specifies the location of the measurement mark on rounded packaging will be removed.
4.12 Size etc. of characters in measurement marking	Subregulations 1, 2(a-c), 3 and 4 will be removed because the characters of the measurement mark will merely need to be legible and prominent if a principles based approach is adopted. Subregulations (2)(d) and (5) will also be removed as there will be no specific requirements for a product type that is allowed a handwritten measurement mark.
4.13 Types and units of measurement to be used	Simplification of subregulations (1)–(5) with a set of principles used to define the units of measurement in Schedules 5 and 6.

Regulation	Proposed Change
4.14 Fractions and Significant Figures	Consolidate subregulation (1) and (2).
4.15 Special provision – marking by approved printing device	This regulation will be removed.
4.16 Marking by reference to a minimum measurement	Subregulation (1) will be updated to align with the changes made to reg. 4.17.
Subdivision 2 – Special provision for measurement marking of certain products	
4.17 Eggs	Repeal regulation and Industry to self-regulate.
4.18 Products packed in sheets	Move into Schedule 5 that describes the measurement possible for specific products.
4.19 Number of packages comprising 1 tonne	Move into Schedule 5.
4.20 Bedsheets, tarpaulins etc.	This regulation will be removed.
4.21 Pairs of window curtains	This regulation will be removed.
4.22 Marking of width or thickness if it directly affects price	Move to regulation 4.13 that discusses type and units of measurement to be used.

Table 3. Additional proposed policy changes to update Part 4 of the NTMR 2009 under Option 3.

Option 3 is mapped in Figure 4 (Appendix B). It represents a simplified version of NTMR 2009. It is intended that regulations that define the presentation and detail to be marked on a package will be retained.

4.3.2 Industry impact

Industry groups argue that the measurement mark is not a safety requirement of the product and should be of lesser importance than, for example, allergen information. Therefore, if the measurement mark is presented in a form that is *legible* and *prominent* this means the mark will be easy to read and locate, and will not mislead the consumer.

Industry groups also claim that regulation costs, including relabelling, are passed onto the consumer.

“High Australian regulatory costs encourage consumers to buy directly from overseas suppliers, bypassing the over-prescriptive trade measurement requirements.” - Industry association.

“Re-labelling is more expensive than original labelling.” - Industry association.

A principal concern of many industry stakeholders lies in the degree of prescription in the trade regulations in regard to the measurement statement, and the compliance costs. Therefore, there is support for Option 3 from a range of stakeholders in different sectors to relax the presentational requirements of the measurement mark.

“The regulations overreach their intended policy outcome.” – Industry association

“The current requirements are over-prescriptive, imposing unnecessary burdens on imported goods and unnecessary costs on the domestic industry, especially when compared with equivalent mandatory informational (as distinct from safety related) statements.” – Industry association

The general acceptance from industry is that prescriptive regulation creates restrictions on both the regulators and the subjects of the regulation that are often not necessary. For example, under the current regulations it is illegal to present the measurement mark horizontally where the brand name runs vertically [Regulation 4.11 (1)(b)]. Many recent reforms in the Australian regulatory sphere have moved to adopt a principles-based approach. In regulations related to labelling, both food labelling and product labelling as administered by the Australia New Zealand Food Standards Code, and the Consumer Competition Laws, respectively, have moved to a principles-based approach. This reflects policy decision in these areas to develop standards that were less prescriptive, easier to implement and amend, that encourage innovation, international harmonisation and trade.

4.3.3 Consumer impact

Consumer groups have made it clear that they do not favour a principles-based approach to the measurement mark labelled on packaging. Under Option 3, the presentation of the measurement mark will need to conform to being *legible* and *prominent*. However, consumer groups favour the current prescriptive requirements, where the size of the characters relative to the package dimensions and the position relative to the limits of the package and brand name are prescribed.

“A principles based approach would reduce consumer confidence and trust which would in turn have negative impacts on industry.” – Consumer association

“A more flexible approach would result in the information often being much less prominent and readable for consumers because industry will give higher priority to making other information prominent and easily readable.” – Consumer association

*“Measurable requirements ensure that the measurement marking on any package will achieve at least a minimum level of prominence and legibility for consumers.”
– Consumer association*

“Allowing flexibility of location would result in great diversity in the location of the information on packages which would make it much more difficult for consumers to quickly and easily find and use the information and would result in less consumer awareness and use of measurement markings.” – Consumer association

5. Impact analysis

This section outlines the impacts of the two proposed options (Options 2 and 3) on Australians overall, above the baseline scenario represented by Option 1, which involves no change to the NTMR 2009 as it currently stands. The effects across the various stakeholder groups are identified.

5.1 Industry size and consumer demand

Estimating the impact of this change on consumers and industry will be dependent on various assumptions. The outcome of this analysis is aimed at giving an indicative picture of the impact of the various options.

5.1.1 Consumer size

A 2012 study reviewing the impact of unit pricing used the number of households as reported in the 2012 census (around 9.1 million households). This data is also available from the Australian Bureau of Statistics (ABS), and in 2016 it was estimated that there were close to 9.3 million households in Australia with an average of 2.6 persons per household.¹⁷

The recent Country of Origin Labelling (CoOL) review used 8.8 million as an estimation of the number of shoppers in Australia, based on data from the most recent Household Expenditure Survey.¹⁸

5.1.2 Grocery sector

The revenue of the grocery industry is estimated to reach \$105.1 billion in 2016-17. The segmentation of the products and services sold is shown below.

¹⁷ ABS data 3236.0 Household and Family projections.

¹⁸ Household Expenditure Survey, Australia 2009-10, released September 2011, the survey estimates a total of 8 398 500 households in Australia, 95 per cent of which are single family or lone person households. The remaining 5 per cent are multiple family or group households. Assuming one shopper per each single family/lone person household and an average of two for each multiple family/group household, it is estimated there were a total of 8 818 425 regular shoppers in 2009-10 in Australia (40.8% of the estimated population of the time). <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6530.0Main+Features12009-10?OpenDocument>

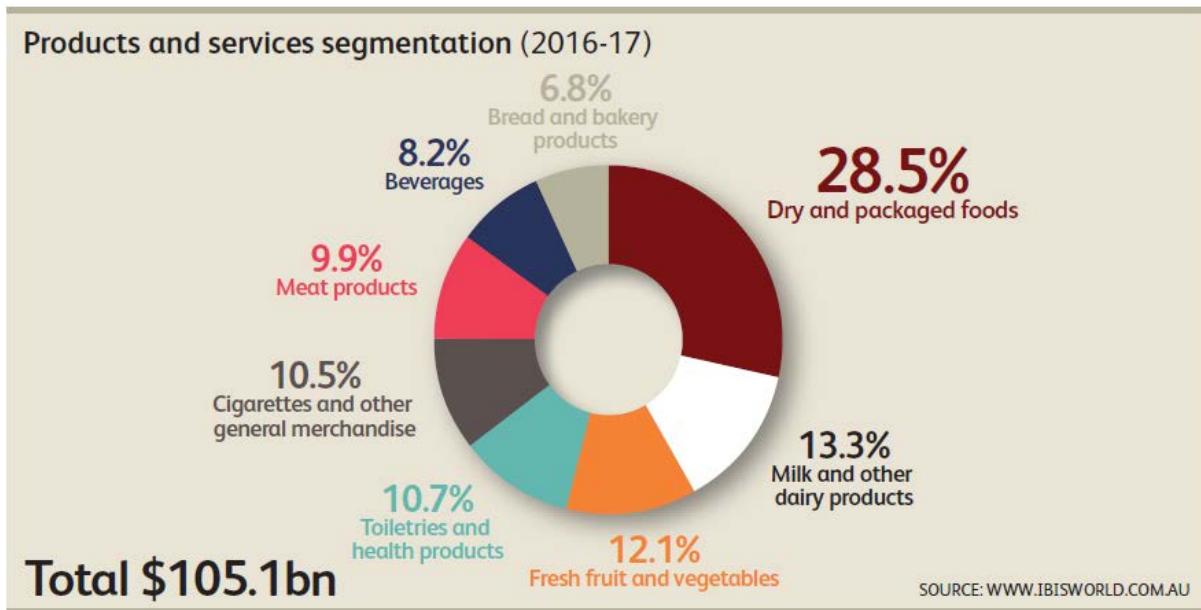


Figure 2: Share of products sold in grocery industry.

During the CoOL review¹⁹, retailers were asked to report on the number of stock keeping units (SKU)²⁰ stocked in their stores. These were broken down by the following categories:

- Packaged versus unpackaged products.
- Products that were exclusive to their supermarket (50 per cent) versus non-exclusive products.
- Imported (four per cent) versus products manufactured in Australia (including those with a mix of local and imported ingredients).

The estimated number of total SKUs presented in the CoOL regulation impact statement (RIS) was 78 800.

5.1.3 Cosmetic and toiletries sector

Based on reports from IBIS World²¹, Australia's annual cosmetic and toiletry industry revenue is \$17.9 billion, with each household spending approximately \$1931 per year, or \$37 per week on cosmetics and toiletries. In 2015, cosmetic imports from the EU were

¹⁹ <https://industry.gov.au/industry/IndustrySectors/FoodManufacturingIndustry/Documents/CoOL-Decision-RIS.pdf>

²⁰ A stock keeping unit (SKU) is a term businesses use in managing inventory. It refers to a separate item in a product line. For example, one company may manufacture a wide range of fruit juices. Each combination of fruit juice flavour and package size would be regarded as one SKU in the range of fruit juice products. SKU was the key unit used in the CoOL RIS for calculating estimates of labelling costs for business.

²¹ IBISWorld Industry Reports G4111 – Supermarkets and Grocery Stores in Australia, G4260 – Department Stores, G4271a - Pharmacies, G4271b – Cosmetic and Toiletry Retailing in Australia

valued at \$926.2 million²², and over 30 per cent of all cosmetic imports were from the EU (See trade data in Appendix C).

5.2 Consumer impact

The costs and benefits of moving the location of the measurement mark for consumers are difficult to quantify. However, both the review of unit pricing²³ conducted in 2012 and in the CoOL regulation impact statement²⁴ followed a similar process to estimate this value. The approach equates the time taken for the consumers, either saving or costing the consumer time. This review uses a similar approach below.

The current regulations require the measurement mark to be on the primary display panel, generally this panel is considered the front of the package. Given the measurement mark will remain on product packages somewhere, it is assumed that consumers wanting to access this information will still do so, at the cost of their own additional time.

The cost to consumer is dependent on the time taken to seek out information, multiplied by the number of consumers who would be interested in that information.

$$\text{Consumer cost} = (\text{No. of interested consumers})(\text{Time impact})$$

5.2.1 Interested consumers

An interested consumer is one who would seek out the measurement mark information on the package, in isolation of seeking any other information.

Market research found that when compared with alternative information, the measurement mark was not considered among the most useful type of information that could be placed on the front of packages (all product types), ranking equal sixth of the eight types of information tested. Overall 10 per cent of respondents considered it to be most useful piece of information. However, when directly asked, the measurement mark was considered *at least moderately useful* as a way of determining value for money when choosing between product options by 78 per cent of respondents.

“However, the results from the more indirect and derived tests in the survey (and also the qualitative interviews) suggest that in practice the measurement mark plays a more intermittent and less important role in consumer decision making – and that people may overstate its importance

²² Cosmetic products are defined using the [Harmonised System \(HS\) codes](#), and for the purposes of this report include HS2712 (mineral oil), HS33 (cosmetics) and HS34 (soaps).

²³ <https://www.choice.com.au/~media/dac0c5172feb4857914b08cabeade490.ashx> last accessed 09/05/2017

²⁴ <https://industry.gov.au/industry/IndustrySectors/FoodManufacturingIndustry/Documents/CoOL-Decision-RIS.pdf>

in traditional direct questioning surveys. It is possible that they are basing those prompted responses more on their occasional “high need” moments rather than more typical behaviours.” – ORIMA report p6

For comparison, the 2012 review of unit pricing summarised the benefits of unit pricing to consumers. It found that “Survey research and other studies would appear to suggest that between 25 and 80 per cent of grocery shoppers use unit price”. This indicates a similar wide range of results. A review of recent studies suggests it is likely that the use of unit pricing is at the lower end of these estimates.^{25,26}

As noted earlier, there are approximately 9.3 million households. For the purpose of this estimate, the households are divided into four categories, those who refer to the measurement mark often, sometimes, rarely or never. It is necessary to estimate the percentage of households in each category and the respective level of use of the measurement mark. In Table 4 below, the levels of use are equal to approximately four products a week for *often* households, around one and a half products week for *sometimes* and around one product every two weeks for *rarely*.

% of shoppers	No of households	Use	% use	No households using the measurement mark
30	2 780 610	never	0	0
30	2 780 610	rarely	1	27 806
30	2 780 610	sometimes	4	111 224
10	926 780	often	10	92 678

Table 4: Estimated use of measurement mark

Another assumption to factor in is whether the package would be picked up for any other purpose (for example ingredients, CoOL, dietary/nutritional info, use by date). It is assumed that consumers who use the measurement mark information more frequently, also seek out other information on the package more frequently. These assumptions are factored in below in Table 5.

No households using the measurement mark	Use	% sole purpose	No households using the measurement mark
0	never	0	0

²⁵ <https://theconversation.com/unit-pricing-saves-money-but-is-the-forgotten-shopping-tool-61379>

²⁶ <https://theconversation.com/unit-pricing-is-smart-shopping-practice-but-do-consumers-care-8414>

No households using the measurement mark	Use	% sole purpose	No households using the measurement mark
27 806	rarely	90	25 025
111 224	sometimes	50	55 612
92 678	often	30	27 806

Table 5: Estimated use of measurement mark as the sole purpose for looking at package

This gives the number of households who use the measurement mark data at around 110 000, just 1.2% of the total number.

5.2.2 Time impact

The time impact can be expressed as follows:

$$\text{Time impact} = (\text{No. of products per shopping week})(\text{Time to find measurement mark})$$

To estimate the number of products per week, several sources are used. In a survey by Choice of products sourced from Coles and Woolworths, the cost of a grocery basket is around \$167 for 31 items.²⁷ This equates to an average of \$5.40 a product. The ABS survey of household expenditure from 2009-10²⁸ supports an estimate of \$260-270²⁹ as the weekly grocery household spend. Taking the average product price and the household expenditure, the estimated number of products per shopping week is around 50.

For Options 2 and 3, not all of the 50 products are in scope. IBISWorld data suggests that cosmetics (or toiletries and health products) make up around 11 per cent of the grocery market (from Figure 2). This suggests that around five items per weekly shop would be toiletries and health products. For Option 3, IBISWorld data indicates that roughly 25 per cent of products would either not have or not move the label (fresh fruit and vegetables, meat products, bread and bakery products). This results in 37 products per week per household.

It is then necessary to estimate what the percentage of products is that would be affected. For Option 2, industry has indicated that around 5 per cent of product imported from the EU won't have the label on the front. Australia currently imports just under \$930 million of cosmetics from the EU. IBISWorld values the market for cosmetics in Australia is around \$17.9 billion.³⁰ Assuming the product is marked up by 50 per cent, to \$1.4 billion, imports from EU contribute to around 8 per cent of the toiletries and health products market.

²⁷ <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/cheapest-groceries-australia>

²⁸ ABS 2009-10 Household Expenditure Survey, 6530.0, <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6530.02009-10?OpenDocument>

²⁹ In 2009-10, food and non-alcoholic beverages (\$204), alcoholic beverages (\$32), tobacco products (\$13), personal care (\$24). The total of these expenditures is \$273, though not all purchases would be of products, and would include meals and personal care services.

³⁰ IBISWorld Industry Reports G4111 – Supermarkets and Grocery Stores in Australia, G4260 – Department Stores, G4271a - Pharmacies, G4271b – Cosmetic and Toiletry Retailing in Australia

Assuming 5 per cent of those don't have a label on the front, the number of products that won't have a label is just 0.4 per cent of the sector.

The number of products, 0.4 per cent of five per week, is 0.021 products per week per household. Returning to the above calculation, assuming 20 seconds per product then the time impact is 0.42 seconds per week per consumer. From this, the cost to households is around \$19 000 per year. For Option 3, assuming only EU imports indicated by industry are included, the addition cost to that found for Option 2 is several hundred dollars per year.

Up until now, it has been assumed that the only products with changes to labels are those that would currently require relabeling (imports from the EU). However, it is likely that other domestic producers will change the label of products. To model this effect, a range of percentage of the product line that has had the measurement mark changed are used. This is shown below in Table 6 for cosmetics.

% of products	Time (seconds)	Cost	SKUs
1	1.1	\$48 601	93
2	2.1	\$97 202	186
5	5.4	\$243 005	465
10	10.7	\$486 010	931
25	26.8	\$1 215 025	2327

Table 6: Time impact (per week per customer) and annual cost for a range of cosmetic products changed under Option 2

For Option 3, the assumption has a broader implication because of the wider reach of the products.

% of products	Time (seconds)	Cost	SKUs
0.1	0.75	\$34 066	65
1	7.5	\$340 661	653
2	15	\$681 332	1305
5	37.5	\$1 703 306	3263
10	75	\$3 406 612	6525
25	187.5	\$8 516 529	16 313

Table 7: Time impact (per week per customer) and annual cost for a range of products changed under Option 3

The number of product types (SKUs) is estimated using a total of 79 000 SKUs³¹. For this review, a 5 per cent change is considered realistic in the cosmetic sector should Option 2 or

³¹ As discussed in section 5.1.2. Toiletries and health products are assumed to be 10.7% or 9300 SKUs. For Option 3, it is assumed that only 75% of products are in scope or 65 000 SKUs.

Option 3 be adopted, and a 1-2 per cent change of possible products, will change occur if Option 3 was adopted.

It is also possible that consumers will obtain more product information if the measurement mark is replaced by some other information on the front of the package, which could compensate for the time lost. ORIMA's research (Appendix A) indicated that 90 per cent of respondents found information other than the measurement mark useful if displayed on the front of the package (for example country of origin labelling).

Accepting the inherent error in these calculations, the estimated cost for Option 2 is taken as \$200 000, and for Option 3 as \$600 000.

5.3 Industry Impact

Fast moving consumer goods such as cosmetics and alcoholic beverages sometimes need relabelling. This is mainly for products imported from the EU. In 2015, A\$958 million and A\$734 million of alcoholic beverages, and perfumery and cosmetics (excluding soap) respectively were imported into Australia from the EU.³² Imports in these sectors have increased by 10.4 per cent and 7.8 per cent respectively since the last year.³³ More flexible regulation would remove the need to relabel, leading to a decrease in costs of imported European products. Furthermore, removing the need to relabel could increase Australia's attractiveness as an import market leading to new products entering Australia and increased consumer choice.

Industry groups have stated that there are a large number of costs associated with relabelling a product. These include the cost of the label itself, designing of the label, cost to unpack the good, repack and re-seal and any damages to the product resulting from the relabelling. Some businesses decide to place stickers on the front of the package to meet the legislation requirements, though they claim it devalues the brand.

To estimate the impact on industry, it is necessary to make some assumptions relating to the cost of relabelling and the percentage of units relabelled to estimate the cost using the following formula:

Relabelling cost	=	(units imported)(cost of relabelling)(percentage units relabelled)
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A simple observation here is that using the assumption of a relabelling cost of \$1 per unit and one per cent of units being relabelled, the cost to business is \$0.01 per unit. Varying the

³² Department of Foreign Affairs and Trade, *Composition of Trade Australia 2015*, p123 <http://dfat.gov.au/about-us/publications/Documents/cot-cy-2015.pdf>

³³ Ibid.

assumptions will scale the cost proportionately, for example assuming relabelling cost to be 50c per unit will reduce the cost to \$0.005 per unit.

The challenge it is to get a realistic estimate of the three variables in the above equation.

To estimate the number of units imported, data for cosmetics was sourced from the departmental Trade Information System (TIS) using the Harmonised System (HS) codes shown at Appendix E; the import data was broken down to four digit HS codes. In each code, a proxy product was selected to provide an indicative cost and quantity of a type example of a unit. The list for cosmetic proxy products is included at Appendix E. Using the proxy samples, estimates were made of the number of units imported, based on value and on quantity. It was found that the number of units calculated by price was generally smaller than by volume. This was attributed to the fact that the proxy used a retail cost, whereas the trade data was based on wholesale cost. Additionally, the proxy product may not have accurately represented the average product, and so the proxy price and volume were adjusted to ensure the unit import volume was similar for both product value and product volume. The adjusted values are included in the tables at Appendix E. Additionally, because the data is not complete for the volume imported, estimates of the unit import number only use the product value data.

Estimates of the cost of relabelling have arisen during this consultation and in other Government reviews. During the current process, industry groups estimated the cost of relabelling a product to be 25 cents to \$1 per unit, and this results in an overall cost of \$10 000 to \$75 000 for a product run.³⁴

During the CoOL consultations, a large retailer of imported products indicated that it was rare for products to arrive in Australia without already being compliant with labelling regulations. As part of the CoOL consultations, it was estimated that the average cost to relabel a single unit is in the range 10c to 50c per product unit. At that time, the volume of imported products could not be calculated due to lack of data, so an estimate of the potential cost to relabel overseas products was not made.

For the current study, a range of labelling costs is assumed to be between 30c and 70c per unit.

5.3.1 Option 2 – Exemption for cosmetics

For option 2, there is no additional cost to industry from the changes. The only effect of the change is a possible savings to the cosmetic sector.

From the trade data (Appendix C), the number of units imported from the European Union per year based on value was estimated to be A\$156 million by cost. Accord estimates that across all the categories, around five per cent of products have no unit measure on the

³⁴ ACCORD, Op. Cit.

principal display panel. Additionally, some 24 per cent that did comply with the principal display panel requirement were below the font height required. Setting the proxy product costs as fixed, the estimate for the cost to relabel has two variables, the percentage of products needing relabelling (estimated to be between 5 per cent and 30 per cent), and the cost of relabelling (30c to 70c).

The value for the cost for relabelling is shown below in Table 8.³⁵ Using these estimates, the cost to industry could be from \$2.3 million to \$33 million. This equates to between 8 million units and 47 million units being relabelled.

Percentage of products needing relabelling	Cost to relabel (\$ per unit)	
	0.3	0.7
5	\$2.3m	\$5.5m
30	\$14.0m	\$32.8m

Table 8: Varying cost estimates for the relabelling of cosmetics

However, although the upper end of the estimated values is substantial, the expectation is that the number product lines that currently are being relabelled is towards the lower end of these estimates.

For the current purposes, in evaluating the savings from Option 2, the assumptions of 5 per cent of products needing relabelling, and 50c per unit results in \$3.9 million in savings to industry.³⁶ This value will be used in assessing the overall impact of the change.

5.3.2 Option 3 – Principles-based approach

For Option 3, there is no cost to industry from the changes. The only effect of the change is a possible savings to the sectors currently required to relabel their products.

The expanded use of a principles-based approach has potential application to product sectors in the grocery retail environment, and considerably widens the applicability of the change in comparison to Option 2, particularly for the food and beverages sector. However, the only segment that notes a current need to relabel a product line is the alcoholic beverage sector. Within this sector, it is not consistently raised as an issue as many product lines are imported with Australian specific face labels, as well as Australian specific back labels covering the mandatory inclusions.

Assuming that the products needing relabelling across the sector imported from the EU is between 0.1 per cent and 1 per cent. Using the cost proxy values for products, between

³⁵ Data used for these calculations is included in Appendix E.3

³⁶ Appendix E.4 has the data for this calculation

130 000 units and 1.3 million units would be relabelled. An estimate of the possible costs to industry is represented in Table 9 below.³⁷

Percentage of products needing relabelling	Cost to relabel (\$ per unit)	
	0.3	0.7
0.1	\$0.04m	\$0.09m
1	\$0.4m	\$0.9m

Table 9: Varying cost estimates for the relabelling of beverages

Enquiries to industry resulted in a more targeted relabelling requirements for product categories, HS2204 (4 per cent) and HS2208 (12 per cent).³⁸ However, due to limited engagement by industry, these are deemed to be upper estimates of the savings.

Assuming that this relabelling applied to 20 per cent of the sector, then approximately 670 000 units would be relabelled. The relabelling cost is assumed to be at 50c per unit. This results in additional savings of approximately \$330 000 in addition to those calculated for Option 2.³⁹

5.4 Other costs and benefits

Costs incurred by government through the reform of Part 4 of the NTMR 2009 has not been estimated. A shift to Option 3 and a principles-based regulation will require a change in enforcement processes and the creation of more guidance material for industry. However, given information about the current implementation of the regulations, any costs/savings are not expected to be major in comparison to the enforcement of the current regulations (Appendix D).

5.5 Summary of impacts

Table 10 summarises the key quantified impacts on industry and consumers. Given the uncertainty associated with the data used to calculate this impact, the difference between Option 2 and Option 3 is negligible. However, it is notable that the changes proposed create no cost to industry thereby only possibly providing a benefit.

³⁷ Appendix E.7 has the data used to make these calculations.

³⁸ HS2204 - Wine of fresh grapes, including fortified wines; grape must other than that of heading no. 2009; HS 2208 - Ethyl alcohol, undenatured; of an alcoholic strength by volume of less than 80% volume; spirits, liqueurs and other spirituous beverages.

³⁹ Appendix E.8 has the data used for this calculation

Impact Category	Option 2	Option 3
Total Benefits		
Industry Savings	\$3.9 m	\$4.2 m
Total Costs		
Consumer Costs	\$0.2 m	\$0.6 m
Net Present Value	\$3.7 m	\$3.6 m

Table 10: Total benefits and costs for industry and consumers

6. Recommendation

Option 3 is the preferred option. The proposed change to a principles-based approach would allow all current labels to continue functioning legally without any change. However, it would allow easier access for a range of imported products and in time, it will allow a greater flexibility for the labelling of domestic products.

Inertia is not a viable argument to maintain the status quo. With consumers wanting varying information about products, it is reasonable to allow industry to determine what factor differentiates them from their competitors. Where unit pricing exists, the need to display the size of a product on the principal display panel does not aid determining value for money.

The impact analysis did not show a significant variation between Option 2 and Option 3. Thus, Option 2 offers the same savings with less regulatory change. However, neither the magnitude of savings nor achieving minimal change should be the main driver of the regulation change in this case. The driver for this reform is to achieve the simplest and most efficient regulations that address the needs of both the consumer and industry, and will facilitate international trade.

Flexibility to deal with ongoing change is also an important consideration for regulation. Advances in digital technology in particular are changing the ways in which consumers can obtain information and make informed choices about packaged consumer goods. Regulation should not act as barrier or disincentive to adoption of new approaches and innovations that can benefit both business and consumers.

The reform of Part 4 of the NTMR 2009 as proposed by Option 3 will provide greater consistency with other domestic labelling regulations, such as the Australia New Zealand Food Standards Code, Australian import and export laws and therapeutic goods regulations. For products that are required to comply with different regulations, consistent wording should avoid unnecessary or contradictory compliance obligations. Reform will also ensure that it is consistent with Australia's international trade obligations.

7. Implementation and review

7.1 Implementation issues and legislative changes

The regulations will be revised as specified in sections 4.2.1 and 4.3.1 of this document.

The Department of Immigration and Border Protection is responsible for changes to the import regulations and will progress necessary changes to the Commerce (Imports) Regulations 1940 to ensure consistency of approach with these regulations.

Guidelines based on the current regulations will be issued to ensure companies that desire a prescriptive approach to comply with the regulations will be able to do so. These will be written to ensure that where Australia's trading partners have prescriptive requirements, a company following the guidelines should comply with requirements.

The National Measurement Institute will retain responsibility for monitoring and enforcing the NTMR 2009, regardless of the option chosen to implement.

7.2 Review

A review of the changes should be conducted within five years of the changes being implemented. This could be done in conjunction with wider reviews of the NTMR 2009, to ascertain that the reforms are meeting their objectives, and consider the impacts of the changes, including any unintended consequences arising from their implementation.

A1. Consultation

DIIS has consulted with the public on the review through:

- A discussion paper providing detail on the scope of the review and seeking feedback on Part 4.
- A streamlined online survey addressing issues specific to the measurement mark labelling.

Both consultations were open for comment via the Australian Government Department of Industry, Innovation and Science Consultation hub from 11 November 2015 until 18 December 2015. These can be found at:

- https://consult.industry.gov.au/packaging-review-team/measurement-mark/consult_view
- https://consult.industry.gov.au/packaging-review-team/national-trade-measurement-regulations-2009/consult_view/.

Submissions to these consultations that were not confidential have been published. During the consultation period 22 written submissions were received as well as 593 online survey respondents.

A1.1 One-on-one meetings

DIIS officers also held several one-on-one meetings with a range of businesses, industry associations and consumer groups. This included food manufacturers and labellers. The meetings focussed on discussing the potential cost of reforms and implementation issues.

A1.2 Promoting Consultation

The release of the consultation package was promoted via a number of channels including a mail out and an email to interested parties who are subscribed to receive updates.

Around 800 businesses that were complainants or were issued with non-compliance notices by the NMI in the past were contacted via a mail out alerting them to the review and seeking input in the online survey.

Other relevant businesses and consumer stakeholders were identified through a range of activities, including:

- interested parties who subscribed to receive updates on the review
- liaison with other Australian Government agencies (e.g. NMI)
- online research.

A1.3 Market Research

In addition to seeking direct input from stakeholders on the implications of changes to Part 4 through comment on the discussion paper, DIIS commissioned ORIMA Research to investigate the importance and usage of the measurement mark on packaged fast moving consumer goods (FMCG) products as part of wider agenda to reduce potentially unnecessary Government regulation.⁴⁰

The overarching research issue was to understand how important the measurement mark is, in both an absolute sense and relative to other label components, and understanding consumer responses to differential formats, locations, and sizes of the measurement mark across a series of typical FMCG products. The question at the core of this study was: if there was a change in orientation / positioning, what would be the impact (if any) to the consumer?

The results from parts of this study were broadly consistent with those from other surveys on this topic, which have typically shown that when Australian consumers are prompted to think about the measurement marking, they consider it to be an important part of product labelling warranting Government regulation. However, the results from the more indirect and derived tests in the survey (and also the qualitative interviews) suggest that in practice the measurement mark plays a more intermittent and less important role in consumer decision making – and that people may overstate its importance in traditional direct questioning surveys. It is possible that they are basing those prompted responses more on their occasional *high need* moments rather than more typical behaviours. This difference between conscious, rational self-analysis and actual observed behaviour is very common in social psychology, and avoiding this was a key design consideration in the development of this study.

This will be important to consider when anticipating how the community might respond to any changes in regulations around the measurement mark. The results from here and other surveys suggest consumers will respond to any deregulation of the measurement mark based on a level of perceived importance that might not be matched in their actual behaviours and consumer experiences, and a high level of supporting communications and explanations would be advantageous.

When directly asked, a majority of respondents to the survey believe that government regulation is needed for the format and placement of the measurement mark (68 per cent). However, in the indirect testing of the absolute and relative importance of the measurement mark:

- Only 10 per cent of respondents indicated the measurement mark was the most useful of eight different types of information that could be placed front of pack,

⁴⁰ ORIMA Research: Understanding Consumer Preferences Towards Measurement Markings On Fast Moving Consumer Goods Product Packages- https://consult.industry.gov.au/packaging-review-team/measurement-mark/supporting_documents/ORIMASurveyResults.docx

and that other information was considerably more useful for both food and non-food products.

- When confronted with a typical consumer choice of whether to buy a product on special or one not on special where the only real variation was pack size and cost, benchmark performance in *correctly* choosing was only moderate even with the status quo measurement mark placement, and only deteriorated significantly for some placements.
- Of the eight variations in measurement mark placement tested across six products in both food and non-food categories, no more than 25 per cent felt that any of the placements were unacceptable and in need of government regulation to avoid.

Overall the study suggests people feel the measurement mark is too important to be totally unregulated—but that the variations tested do not cross a threshold beyond which they feel the measurement mark has been compromised to the point where it is no longer usable.

In terms of net benefit or detriment through changes to regulation of the measurement mark, the detriments appear primarily in terms of expectation and sentiment. People clearly feel the measurement mark is important, and their expectation is that it be protected to some extent. The qualitative interviews however showed little passion from consumers about the measurement mark, indicating that on those occasions when they wanted to use the measurement mark that they would either make the effort to find it – or if a particular product made it hard to find, simply choose an alternative. Actual consumer performance appeared to deteriorate little as a result of the variations tested (noting that in the survey, respondents were able to see both the back and front of pack simultaneously, which is not usually the case in a real situation).

Older consumers seem the most likely to react negatively to relaxing the measurement mark regulations – though at the same time they were a group who rated the measurement mark relatively low in terms of relative usefulness as front of pack information in Test 1, as per the ORIMA report.⁴¹

Some of the measurement mark placements tested for food products actually resulted in better performance on the value for money test (Test 2) – and perhaps counterintuitively these were all positions on the back of the pack. It is possible that for food products, respondents were willing to make a bit more effort to find the measurement mark in order to assist their decision and having done so then processed the information more effectively. Furthermore, additional benefit may be experienced by consumers from having the more useful types of information on the front of pack (Test 1).

Three dimensions of variation were tested in the survey:

⁴¹ ORIMA Research: Understanding Consumer Preferences Towards Measurement Markings On Fast Moving Consumer Goods Product Packages- https://consult.industry.gov.au/packaging-review-team/measurement-mark/supporting_documents/ORIMASurveyResults.docx

- front and back placement
- large and small fonts
- horizontal and vertical orientation.

None of these three dimensions consistently emerged as clearly more or less critical than the others, and in general the obvious version was preferred for each dimension (i.e. front, large, horizontal). However, what was observed was that the more of these dimensions that were varied from the status quo position, the poorer the measurement mark performed across the range of tests and stated preferences. This reinforces the conclusion that there is a threshold at which a majority of respondents would feel that a measurement mark position was not acceptable – but in this research it did not appear to reach that point.

B.1 Regulatory structure

The Commonwealth has constitutional responsibility for weights and measures (section 51(xv) of the Constitution). However, prior to 2008, the Commonwealth chose not to enact comprehensive legal metrology legislation. While the *National Measurement Act 1960* (the Act) defined technical infrastructure that the Commonwealth delivers to support trade measurement, such as maintaining Australia's measurement standards and approving the design of trade measuring instruments, the primary responsibility remained with the states and territories.

In the early 1990s, the states and territories developed uniform trade measurement legislation (the UTML) that included a model *Trade Measurement Act 1989* and model regulations with respect to pre-packed articles – the *Trade Measurement (Prepacked Articles) Regulations 1990*. All states and territories enacted legislation based on the UTML. However, subsequent changes to the UTML were introduced at different times in different jurisdictions, leading to an inconsistent pattern of regulation. Therefore, on 13 April 2007, the Council of Australian Governments (COAG) decided that a new national system of trade measurement regulation should be introduced.

In 2008, the *National Measurement Act 1960* (the Act) was substantially amended to give effect to this policy decision. The NTMR 2009 prescribe the particulars of the national (Commonwealth) system of trade measurement regulation provided for in the 2008 amendments to the Act. The NTMR 2009 replicate, or substantially correspond to, the UTML. Part 4 of the NTMR 2009, which concerns pre-packages, corresponds to the model *Trade Measurement (Prepacked Articles) Regulations*. It also introduced a number of new provisions concerning the Average Quantity System, an internationally agreed method of determining the measurement of pre-packed articles with a 'constant nominal content'. This means it provides confirmation of the measurement or quantity of goods sold by measure (weight, volume, length or area) or count (number of items).

B.2 Key references to NTMR 2009 in the *National Measurement Act 1960*

The NTMR 2009 are an instrument under the *National Measurement Act 1960* that contains the following sections that state where the measurement mark is required. The NTMR 2009 then provide the details of how the measurement mark should be displayed.

The article is of a class that, by regulation, must be sold by measurement.

18HB & 18HC certain articles must be sold by measurement

The person sells an article (whether packed in advance ready for sale or otherwise) or a utility for a price determined by reference to measurement of the article or utility.

18HD (1) (a) Transactions based on measurement to be prescribed in units of measurement

A unit of measurement is prescribed by the regulations for that article or utility, or articles or utilities of that class...

18HD (1) (b) Transactions based on measurement to be prescribed in units of measurement

The person sells an article (whether packed in advance ready for sale or otherwise) for a price determined by reference to measurement of the article.

18HI (1) (a) Articles sold by measurement to be sold by net measurement

A person commits an offence if the packed article is of a class for which the measurement of the article is prescribed and the person does not mark the package with that information.

Paraphrased extract from 18JA 18JB 18JC 18JD Package must be marked with required package information

A person commits an offence if the manner in which that information is to be marked on the package is prescribed by the regulations and the person does not mark the package in that manner.

18JE Package must be marked in prescribed manner

The Act establishes that if it is necessary to determine the utility of price by knowing the measurement of the article in question, the measurement should be marked on the package. Beyond that instruction, the NTMR 2009 is the instrument to determine how this should be implemented.

Option 3



Figure 4: Revised map of NTMR 2009 Regulations for Option 3

B.4 Options for principles-based regulation

Other regulations refer to principles-based requirements for labelling. As noted earlier, there are already principles used in the NTMR 2009, albeit inconsistently. It is desirable to use principles consistently in the NTMR 2009 and consistent with other regulations. For example, the Food Standards Code uses *legible* and *prominent*.

AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE

Standard 1.2.1 – Requirements to have labels or otherwise provide information

Division 6 Legibility requirements

Section 1.2.1—24 General legibility requirements

- (1) If this Code requires a word, statement, expression or design to be contained, written or set out on a label—any words must be in English and any word, statement, expression or design must, wherever occurring:
 - (a) be legible
 - (b) be prominent so as to contrast distinctly with the background of the label.

Under the Trade Practices (Industry Codes – Unit Pricing) Regulations 2009 (the Unit Pricing Code), principles define the display of the unit price for a grocery item that must be:

- prominent – that is, it must stand out so that it is easily seen
- in close proximity to the selling price for the grocery item
- legible – it must not be difficult to read
- unambiguous – the information must be accurate and its meaning must be clear.

UNIT PRICING CODE

Part 2 Requirements to display unit prices

6 Display of unit prices

- (1) Unless subclause (3) or clause 7 applies, a prescribed grocery retailer must display a unit price for all grocery items sold by the retailer for which a selling price is displayed.
- (2) The retailer must ensure that the unit price for a grocery item:
 - (a) is displayed prominently and in close proximity to the selling price for the grocery item
 - (b) is legible and unambiguous.

The EU's packaging regulations are not as prescriptive as Australia's. European legislation states that all pre-package markings should be 'be easily visible, clearly legible and, where appropriate, indelible' on the pre-package in normal conditions of presentation'.

Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers

Article 13

Presentation of mandatory particulars

1. Without prejudice to the national measures adopted under Article 44(2), mandatory food information shall be marked in a conspicuous place in such a way as to be easily visible, clearly legible and, where appropriate, indelible. It shall not in any way be hidden, obscured, detracted from or interrupted by any other written or pictorial matter or any other intervening material.

If principles-based wording is adopted, it will rely on case law to help guide what is acceptable. Experience with the Australian Consumer Law will be important in providing this information. For example, use of the word prominent has been considered in cases related to misleading and deceptive conduct.⁴²

In revising the NTMR 2009, any move to a principles-based approach should ensure consistent language with other domestic regulations where possible.

⁴² <https://www.accc.gov.au/system/files/Avoiding%20unfair%20business%20practices.pdf>, http://www.fairtrading.nsw.gov.au/ftw/Businesses/Acceptable_business_conduct/Misleading_or_deceptive_conduct.page (these could be improved on, actual rulings for example)

C.1 International regulations

Australia is a small consumer market in comparison to global trade. As shown in Table 11, Australia makes up less than 1.5 per cent of global trade in fast moving consumer goods (FMCG)⁴³.

	Imports US\$bn	Exports US\$bn	Global Market Share
Australia	17.4	13.8	< 1.5%
USA	131.7	125.4	> 10%
Canada	39.5	36.3	> 3%

Table 11: Fast moving consumer goods (FMCG) imports and exports⁴⁴

A practical approach to regulation is required that balances the needs of consumers without placing unnecessary burdens placed on business. The National Trade Measurement framework currently restricts the sale of products imported into Australia from overseas jurisdictions where the measurement mark is not located on the front of pack. The associated costs in relabelling and re-designing products for Australian conditions requires assessment to ensure that the regulatory settings support community expectations without adding unnecessary costs to Australian businesses.

In reviewing the regulatory settings for the measurement mark, the international context requires examination to determine the extent to which regulatory changes in Australia could impact trade in key markets. Conversely, Australia’s trade with key international trading partners also requires consideration to inform how regulatory changes could impact trade that would otherwise be destined for Australia.

C.1.1 OIML, EU, UK and US

The OIML provides labelling requirements for pre-packages.⁴⁵ The most current version was published on 10 December 2015. Part 5.1 of the recommendations states:

“A pre-package shall bear a declaration of the nominal quantity of the product on the principal display panel”. The principal display panel is defined in part 2.10 as “part of a pre-package that is designed to be visible

⁴³ Fast moving consumer goods (FMCGs) are defined using the [Harmonised System \(HS\) codes](#), and for the purposes of this report include vegetable products (HS06-15), foodstuffs (HS16-24) and cosmetics (HS2712 and HS33-34).

⁴⁴ Sourced from the UN Comtrade Database <https://comtrade.un.org/data/> - data from 2015

⁴⁵ [Recommendation 79](#) (OIML R 79 Edition 2015)

under normal conditions of display for sale. Note: This is normally the main or front panel of the pre-package and there could be more than one.”

The OIML supports presentation of content on the main or front panel of the pre-packaged product.

European Union

Article 13, part 5 of the Official Journal of the European Union Regulation (EU) No. 1169/2011⁴⁶ for regulations on the provision of food information to consumers states that the following particulars shall appear in the same field of vision

- The name of the food
- The net quantity of the food
- With respect to beverages containing more than 1.2 per cent by volume of alcohol, the actual alcoholic strength by volume

The ‘field of vision’ means all the surfaces of a package that can be read from a single viewing point (Article 1, part 2 k).

The “principal field of vision means the field of vision of a package which is most likely to be seen at first glance by the consumer at the time of purchase and that enables the consumer to immediately identify a product in terms of its character or nature and, if applicable, its brand name. If a package has several identical principal fields of vision, the principal field of vision is the one chosen by the food business operator;”

Therefore, EU regulations also specify presentation of the measurement mark on the front of the package.

Similarly, in the UK, the name and quantity information must be on the front of the packaged food.⁴⁷

Article 19 of the Official Journal of the European Union Regulation (EU) No. 1223/2009⁴⁸ sets the requirements for the packaging of cosmetics. Article 19, part 1b states that the nominal content at the time of packaging, given by weight or by volume (packaging containing less than five grams or five millilitres, free samples and single-application packs are exempt) shall be present on the packaging in indelible, easily legible and visible lettering. There does not appear to be any further requirements regarding the positioning of the net

⁴⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>

⁴⁷ <https://www.gov.uk/food-labelling-and-packaging/food-labelling-what-you-must-show>

⁴⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:342:0059:0209:en:PDF>

quantity on the packaging of small packs. However, Colipa, the European Cosmetics Association, issued Guidelines on Cosmetic Product Labelling 2011 specifically states in relation to *Nominal content*

Rules regarding labelling of the nominal content at the time of packaging are set by: Directive 76/211/EEC of 20 January 1976 relating to the making-up by weight or by volume of certain pre-packaged products....⁴⁹

Directive 76/211/EEC at Article 3, Inscriptions and Markings, states

“All pre-packages made up in accordance with this Directive shall bear on the package the following markings affixed in such a manner as to be indelible, easily legible and visible on the pre-package in normal conditions of presentation”.

“Normal conditions of presentation” is interpreted as front of the package.

The US code 1453 - Requirements of labelling; placement, form, and contents of statement of quantity; supplemental statement of quantity, also states in section (a) (2):

*“The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label”.*⁵⁰

Therefore, EU, UK and US legislation prescribes that the net quantity amount is stated on the front of packaging, with the exception of EU cosmetics in small packages.

To best facilitate trade any reforms to Australian legislation would need to be permissive of EU, UK and US requirements while providing flexibly to recognise other schemes where front-of-pack labelling may not be a specific requirement.

⁴⁹ <http://www.ixpos.de/IXPOS/Content/EN/Your-business-in-germany/SharedDocs/Downloads/guidelines-cosmetic-labeling-cosmetics-europe.pdf?v=3>, p13

⁵⁰ <https://www.law.cornell.edu/uscode/text/15/1453>

C.1.2 Trade Analysis

The current requirements for the measurement marking on pre-packaged goods means that some imported products, predominantly cosmetics from the EU⁵¹, do not comply with AU regulations. As shown below in Figure 5 and Table 12, in 2015 the EU was responsible for 23.5 per cent of FMCG⁵² imports, worth around A\$4.2 billion.⁵³

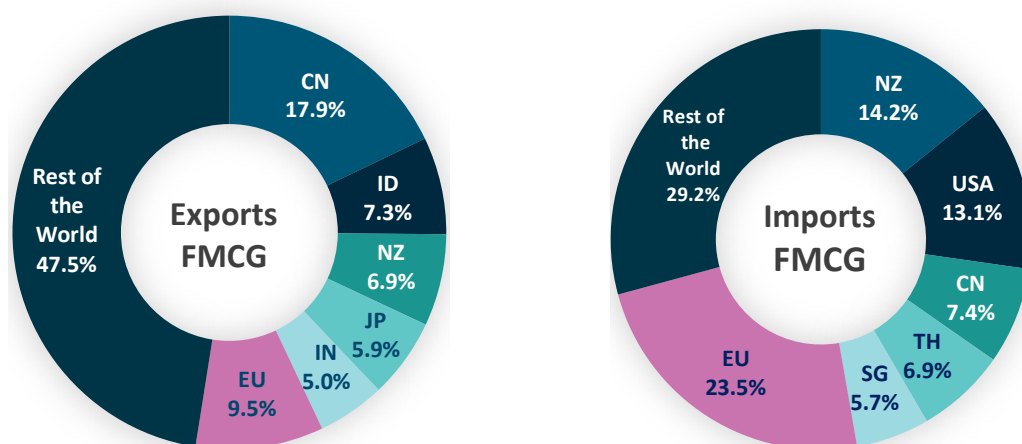


Figure 5: Australia's top trading partners in FMCG, 2015

Table 12 also shows that in 2015, Australia's biggest export market for FMCG was to China valued at A\$4.1 billion, 17.9 per cent of the market share. Australia's greatest import partner for FMCG was from New Zealand valued at A\$2.5 billion, 14.2 per cent of the market.

EXPORTS			IMPORTS		
Country	Value A\$bn	Share	Country	Value A\$bn	Share
China	4.1	17.9%	New Zealand	2.5	14.2%
Indonesia	1.7	7.3%	USA	2.3	13.1%
New Zealand	1.6	6.9%	China	1.3	7.4%
Japan	1.4	5.9%	Thailand	1.2	6.9%
India	1.2	5.0%	Singapore	1.0	5.7%
EU	2.2	9.5%	EU	4.2	23.5%

Table 12: Australia's FMCG Imports and Exports top trading partners, 2015

⁵¹ Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom

⁵² Fast moving consumer goods (FMCGs) are defined using the [Harmonised System \(HS\) codes](#), and for the purposes of this report include vegetable products (HS06-15), foodstuffs (HS16-24) and cosmetics (HS2712 and HS33-34) unless otherwise stated.

⁵³ Data sourced from the Trade Information System (TIS) that collates information on imports and exports of merchandise goods. The data is collected by the Department of Immigration and Border Protection, provided by the ABS.

Focusing on the trade of cosmetic products,⁵⁴ the EU increases its share when measured by value (Table 13). In 2015, over 30 per cent of all cosmetics imported by value were from the EU, valued at A\$926.2 million. This proportion of the trade drops to about 15 per cent when measured by volume/weight of the cosmetic product (Table 14). This indicates that the EU is responsible for high value cosmetic products imported into Australia.

Country	Import value A\$m	Share
USA	814.7	26.4%
China	340.3	11.0%
France	319.4	10.4%
Thailand	247.7	8.0%
UK	183.7	6.0%
Rest of EU	423.1	13.7%

Table 13: Top five cosmetic imports to Australia by value in 2015

Country	Import vol. megalitres	Import weight kilotonne	Share
China	26.0	49.0	20.0%
Thailand	19.3	40.3	15.6%
USA	12.7	31.0	11.1%
Indonesia	17.0	6.4	8.2%
Malaysia	4.5	18.7	5.4%
EU	20.3	35.9	15.2%

Table 14: Top five cosmetic imports by quantity in 2015 (excluding dental floss, which is measured in metres - HS330620)

⁵⁴ Cosmetic products are defined using the [Harmonised System \(HS\) codes](#), and for the purposes of this report include HS2712 (mineral oil), HS33 (cosmetics) and HS34 (soaps)

D.1 Current enforcement

The consequence of a breach under the legislation can range from issuing notices of non-compliance through to infringement notices, fines, court-enforced undertakings and criminal prosecution. The range of enforcement actions are in place to prevent, stop or minimise contraventions of national measurement laws and deter future contraventions. The enforcement options are commensurate with both the level of consequence and the level of likelihood of non-compliance. When both levels are low to medium, a warning letter may be issued in the first instance. Failure to comply with this written warning will in most cases lead to the issuing of an infringement notice. The infringement notice penalty is currently five penalty points (\$900) for each provision of the legislation that has been contravened.⁵⁵

The NMI inspects products to ensure they comply with the NTMR 2009. In 2015-16 trade measurement inspectors examined over 80 000 lines (almost 320,000 individual packages) for correct measure and measurement labelling, almost twice as many as in 2014–15. A compliance examination of product packaging is undertaken following other regulation breaches to ensure products display the correct measurement marking and correct packer identification.⁵⁶ The majority (98 per cent) of pre-packed articles examined were labelled in accordance with the legislation, up seven per cent in 2014-15.⁵⁷ Figure 6 shows the percentage of correct and incorrect package labelling under different product categories; the lowest categories of compliance was beverages (14 per cent incorrect), bakery lines (5 per cent incorrect) and landscape material and fuels (5 per cent incorrect).⁵⁸

⁵⁵ National Measurement Institute, *Compliance and Enforcement Policy*, 2011, <<http://www.measurement.gov.au/Publications/trademeasurement/Documents/ComplianceandEnforcementPolicy.pdf>>

⁵⁶ National Measurement Institute, *National Data 2015-16*, <http://www.measurement.gov.au/Industry/NationalData/Pages/default.aspx>

⁵⁷ Ibid.

⁵⁸ Ibid.

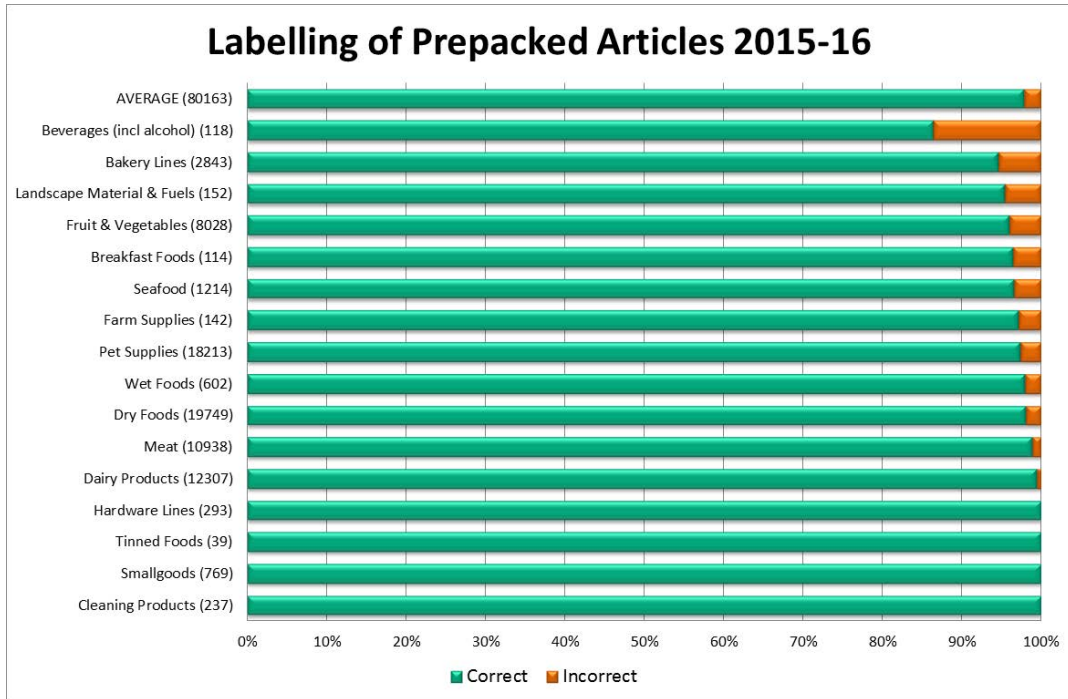


Figure 6: Percentage of Correct/Incorrect Labelling of Pre-packed Articles 2015-16.⁵⁹

In 2015-16 the NMI issued 87 infringement notices with \$85 100 in fines imposed. Only serious or repeated breaches of trade measurement law attract an infringement notice and fine. Of these infringement notices issued, none were related to the measurement labelling of pre-packed articles.⁶⁰

⁵⁹ National Measurement Institute, National Data 2013-14, <<http://www.measurement.gov.au/TradeMeasurement/NationalData/Pages/default.aspx>>

⁶⁰ Ibid.

APPENDIX E

E.1 Cosmetics import costs and volumes from the EU

HS Code	Description	Product Value \$	Product Volume	Unit
33 ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS				
3301	Oils; essential (concretes, absolutes); concentrates thereof in fats, fixed oils, waxes or the like (obtained by enfleurage or maceration); aqueous distillates, solutions and terpenic by-products thereof; resinoids; extracted oleoresins	\$16,894,618	262,888	Kg
3302	Odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for beverage manufacture	\$15,988,947	71,4548	Kg
		\$425,929	5,209	Litres Alcohol
3303	Perfumes and toilet waters	\$238,484,406	3,066,488	Kg
3304	Cosmetic and toilet preparations; beauty, make-up and skin care preparations (excluding medicaments, including sunscreen or sun tan preparations), manicure or pedicure preparations	\$58,315,225	1,647,632	Kg
		\$209,271,991	0	Not Recorded
3305	Hair preparations; for use on the hair	\$98,895,078	0	Not Recorded
3306	Oral or dental hygiene preparations; including fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages	\$26,600,311	2,005,274	Kg
		\$2,599,480	195,402,775	Metres
3307	Perfumery, cosmetic or toilet preparations; pre-shave, shaving, after-shave, bath preparations; personal deodorants and depilatories; room deodorisers, perfumed or not with disinfectant properties or not	\$38,233,321	4,919,186	Kg

Table 15: EU imports to Australia in 2015, HS Code 33

HS Code	Description	Product Value \$	Product Volume	Unit
34 SOAP, ORGANIC SURFACE-ACTIVE AGENTS; WASHING, LUBRICATING, POLISHING OR SCOURING PREPARATIONS; ARTIFICIAL OR PREPARED WAXES, CANDLES AND SIMILAR ARTICLES, MODELLING PASTES, DENTAL WAXES AND DENTAL PREPARATIONS WITH A BASIS OF PLASTER				
3401	Soap; organic surface-active preparations used as soap, skin washing, in bars, cakes, moulded pieces, shapes, liquid or cream, containing soap or not; for retail, paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent	\$11,580,543	2,072,030	Kg
		\$17,126,055	3,891,721	Litres
		\$36,961,566	0	Not Recorded
3402	Organic surface-active agents (not soap); surface-active, washing (including auxiliary washing) and cleaning preparations, containing soap or not, excluding those of heading no. 3401	\$64,772,494	16,286,406	Kg
		\$35,662,040	12,493,193	Litres
3403	Lubricating preparations and those used in oil or grease treatment of textile and similar materials; excluding preparations containing 70% or more (by weight) of petroleum or bituminous mineral oils	\$7,396,366	1,359,821	Kg
		\$24,792,626	3,881,276	Litres
3404	Waxes; artificial, prepared	\$5,309,276	1,240,671	Kg
3405	Polishes, creams, scouring pastes, powders and similar; in any form, (including articles impregnated, coated or covered with such), for furniture, footwear, floors, coachwork, glass or metal	\$6,535,755	551,337	Kg
3406	Candles, tapers and the like	\$2,013,705	176,049	Kg
3407	Modelling pastes, including those for children; dental wax, impression compounds, in sets or packings for retail sale or in plates and similar forms; dentistry preparations with plaster base	\$5,008,260	705,848	Kg

Table 16: EU imports to Australia in 2015, HS Code 34

E.2 Proxy products for each cosmetic class

HS Code	Description	Proxy Product	Source	Price	Volume
33 ESSENTIAL OILS AND RESINOIDS; PERFUMERY, COSMETIC OR TOILET PREPARATIONS					
3301	Oils; essential (concretes, absolutes); concentrates thereof in fats, fixed oils, waxes or the like (obtained by enfleurage or maceration); aqueous distillates, solutions and terpenic by-products thereof; resinoids; extracted oleoresins	Lavender Premium Essential Oils	http://www.ebay.com.au/itm/Lavender-Premium-Essential-Oils-100-Pure-Aromatherapy-Grade-10ml-50ml-100ml-/201574586268?_trksid=p2385738.m2548.l4275	\$14.95	100ml
3302	Odoriferous substances and mixtures (including alcoholic solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for beverage manufacture	Bitters - Angostura	https://shop.coles.com.au/a-national/product/angostura-bitters	\$23.54	200ml
3303	Perfumes and toilet waters	Calvin Klein One Shock for Him	http://www.chemistwarehouse.com.au/buy/65216/Calvin-Klein-One-Shock-for-Him-200ml?source=GS&gclid=CJq6t_XS1NICFVUDvAodN1YE0A	\$34.99	200ml
3304	Cosmetic and toilet preparations; beauty, make-up and skin care preparations (excluding medicaments, including sunscreen or sun tan preparations), manicure or pedicure preparations	L'Oréal Color Riche Lipstick 115 Rouge Coral	http://www.cosmeticcapital.com.au/loreal-color-riche-lipstick-115-rouge-coral?gclid=COzg5uXV1NICFY5hvQod9WIAjQ	\$6.95	5g
		Opi Pedicure	https://www.activeskin.com.au/opi-pedicure-soften-250ml	\$47.19	250ml
3305	Hair preparations; for use on the hair	Rework Putty Wax - V05	https://shop.coles.com.au/a-national/product/vo5-rework-putty-wax	\$9.90	150ml
3306	Oral or dental hygiene preparations; including fixative pastes and powders; yarn used to clean between the teeth (dental floss), in individual retail packages	Sensitive Pro Relief Whitening Toothpaste - Colgate	https://shop.coles.com.au/a-national/product/colgate-pro-relief-toothpaste-sensitive-whitening	\$11.00	110g

		Waxed Dental Floss Mint Flavour - Oral B	https://shop.coles.com.au/a-national/product/oral-b-dental-floss-waxed-mint	\$4.29	50m
3307	Perfumery, cosmetic or toilet preparations; pre-shave, shaving, after-shave, bath preparations; personal deodorants and depilatories; room deodorisers, perfumed or not with disinfectant properties or not	Refresh Aftershave Lotion - Brut	https://shop.coles.com.au/a-national/product/brut-aftershave-lotion-refresh	\$11.55	100ml
34 SOAP, ORGANIC SURFACE-ACTIVE AGENTS; WASHING, LUBRICATING, POLISHING OR SCOURING PREPARATIONS; ARTIFICIAL OR PREPARED WAXES, CANDLES AND SIMILAR ARTICLES, MODELLING PASTES, DENTAL WAXES AND DENTAL PREPARATIONS WITH A BASIS OF PLASTER					
3401	Soap; organic surface-active preparations used as soap, skin washing, in bars, cakes, moulded pieces, shapes, liquid or cream, containing soap or not; for retail, paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent	Regular Beauty Cream Bar 4pk - Dove	https://shop.coles.com.au/a-national/product/dove-soap-beauty-creme-bar-regular	\$9.02	400g
		Evenly Gorgeous Bodywash - Lux	https://shop.coles.com.au/a-national/product/lux-evenly-gorgeous-bodywash	\$6.60	400ml
3402	Organic surface-active agents (not soap); surface-active, washing (including auxiliary washing) and cleaning preparations, containing soap or not, excluding those of heading no. 3401	Ultimate Front and Top Loader Laundry Detergent Washing Powder - OMO	https://shop.coles.com.au/a-national/product/omo-ultimate-front-top-loader-laundry-powder	\$24.20	2000g
		Super Strength Dishwashing Liquid - Morning Fresh	https://shop.coles.com.au/a-national/product/morning-fresh-dishwashing-liquid-super-concentrate-lemon-fresh	\$7.65	900ml
3403	Lubricating preparations and those used in oil or grease treatment of textile and similar materials; excluding preparations containing 70% or more (by weight) of petroleum or bituminous mineral oils	Dubbib - Joseph Lyddy	https://www.josephlyddy.com.au/category/boot-shoe-care/product/dubbin	\$14.45	125g
		Neatsfoot Oil - Joseph Lyddy	http://www.josephlyddy.com.au/category/saddle-harness-care/product/neatsfoot-oil	\$32.95	1000ml
3404	Waxes; artificial, prepared	Paraffin Container Wax	http://www.aussiecandlesupplies.com.au/candle-making/wax/paraffin-wax/paraffin-container-wax.html	\$30.15	4.5kg

3405	Polishes, creams, scouring pastes, powders and similar; in any form, (including articles impregnated, coated or covered with such), for furniture, footwear, floors, coachwork, glass or metal	Liquid Furniture Polish - O' Cedar	https://shop.coles.com.au/a/a-national/product/o-cedar-liquid-furniture-polish	\$8.79	300ml
3406	Candles, tapers and the like	2 in 1 Vanilla Passionfruit and Hawaiian Breeze Candle - Johnsoni	https://shop.coles.com.au/a/a-national/product/glade--candle-2-in-1-vanilla-passionfruit-hawaiian-breeze	\$7.46	96.3g
3407	Modelling pastes, including those for children; dental wax, impression compounds, in sets or packings for retail sale or in plates and similar forms; dentistry preparations with plaster base	Orthodontic Wax - G.U.M	http://www.chemistwarehouse.com.au/buy/68824/Gum-Orthodontic-Wax	\$4.99	40g

Table 17: Proxy products for each cosmetic class

E.3 Estimated costs to industry for each cosmetic class – boundary cases

HS Code	Product value	Est. Price per unit	Unit import no. per year	5 % relabelled	\$0.3 Re-labelling cost per unit	\$0.7 Re-labelling cost per unit	30% relabelled	\$0.3 Re-labelling cost per unit	\$0.7 Re-labelling cost per unit
3301	\$16,894,618	\$7.00	2,413,517	120,676	\$36,203	\$84,473	724,055	\$217,217	\$506,839
3302	\$15,988,947	\$7.00	2,284,135	114,207	\$34,262	\$79,945	685,241	\$205,572	\$479,668
	\$425,929	\$7.00	60,847	3,042	\$913	\$2,130	18,254	\$5,476	\$12,778
3303	\$238,484,406	\$15.00	15,898,960	794,948	\$238,484	\$556,464	4,769,688	\$1,430,906	\$3,338,782
3304	\$58,315,225	\$5.00	11,663,045	583,152	\$174,946	\$408,207	3,498,914	\$1,049,674	\$2,449,239
	\$209,271,991	\$5.00	41,854,398	2,092,720	\$627,816	\$1,464,904	12,556,319	\$3,766,896	\$8,789,424
3305	\$98,895,078	\$6.50	15,214,627	760,731	\$228,219	\$532,512	4,564,388	\$1,369,316	\$3,195,072
3306	\$26,600,311	\$2.50	10,640,124	532,006	\$159,602	\$372,404	3,192,037	\$957,611	\$2,234,426
	\$2,599,480	\$0.65	3,999,200	199,960	\$59,988	\$139,972	1,199,760	\$359,928	\$839,832
3307	\$38,233,321	\$4.00	9,558,330	477,917	\$143,375	\$334,542	2,867,499	\$860,250	\$2,007,249
3401	\$11,580,543	\$4.00	2,895,136	144,757	\$43,427	\$101,330	868,541	\$260,562	\$607,979
	\$17,126,055	\$4.00	4,281,514	214,076	\$64,223	\$149,853	1,284,454	\$385,336	\$899,118
	\$36,961,566	\$4.00	9,240,392	462,020	\$138,606	\$323,414	2,772,117	\$831,635	\$1,940,482
3402	\$64,772,494	\$8.00	8,096,562	404,828	\$121,448	\$283,380	2,428,969	\$728,691	\$1,700,278
	\$35,662,040	\$3.50	10,189,154	509,458	\$152,837	\$356,620	3,056,746	\$917,024	\$2,139,722
3403	\$7,396,366	\$5.00	1,479,273	73,964	\$22,189	\$51,775	443,782	\$133,135	\$310,647
	\$24,792,626	\$10.00	2,479,263	123,963	\$37,189	\$86,774	743,779	\$223,134	\$520,645
3404	\$5,309,276	\$20.00	265,464	13,273	\$3,982	\$9,291	79,639	\$23,892	\$55,747
3405	\$6,535,755	\$5.00	1,307,151	65,358	\$19,607	\$45,750	392,145	\$117,644	\$274,502
3406	\$2,013,705	\$3.50	575,344	28,767	\$8,630	\$20,137	172,603	\$51,781	\$120,822
3407	\$5,008,260	\$3.00	1,669,420	83,471	\$25,041	\$58,430	500,826	\$150,248	\$350,578
Total			156,065,857	7,803,293	\$2,340,988	\$5,462,305	46,819,757	\$14,045,927	\$32,773,830

Table 18: Upper and lower estimates for relabelling of cosmetic products imported from the EU calculated from proxy costs

HS Code	Product vol.	Est Vol. per unit	Unit import no. per year based on vol.	5 % relabelled	\$0.3 Re-labelling cost per unit	\$0.7 Re-labelling cost per unit	30% relabelled	\$0.3 Re-labelling cost per unit	\$0.7 Re-labelling cost per unit
3301	262,888	0.1	2,628,878	131,444	\$39,433	\$92,011	788,663	\$236,599	\$552,064
3302	714,548	0.3	2,381,825	119,091	\$35,727	\$83,364	714,548	\$214,364	\$500,183
	5,209	0.3	17,364	868	\$260	\$608	5,209	\$1,563	\$3,646
3303	3,066,488	0.2	15,332,441	766,622	\$229,987	\$536,635	4,599,732	\$1,379,920	\$3,219,813
3304	1,647,632	0.15	10,984,215	549,211	\$164,763	\$384,448	3,295,265	\$988,579	\$2,306,685
	0	0.15	n/a					n/a	n/a
3305	0	0	n/a					n/a	n/a
3306	2,005,274	0.19	10,554,073	527,704	\$158,311	\$369,393	3,166,222	\$949,867	\$2,216,355
	195,402,775	50	3,908,056	195,403	\$58,621	\$136,782	1,172,417	\$351,725	\$820,692
3307	4,919,186	0.5	9,838,371	491,919	\$147,576	\$344,343	2,951,511	\$885,453	\$2,066,058
3401	2,072,030	0.6	3,453,383	172,669	\$51,801	\$120,868	1,036,015	\$310,804	\$725,210
	3,891,721	0.8	4,864,651	243,233	\$72,970	\$170,263	1,459,395	\$437,819	\$1,021,577
3402	0	0.8			\$0	\$0			\$0
	16,286,406	2	8,143,203	407,160	\$122,148	\$285,012	2,442,961	\$732,888	\$1,710,073
3403	12,493,193	1.2	10,410,994	520,550	\$156,165	\$364,385	3,123,298	\$936,989	\$2,186,309
	1,359,821	0.7	1,942,601	97,130	\$29,139	\$67,991	582,780	\$174,834	\$407,946
3404	3,881,276	1.5	2,587,517	129,376	\$38,813	\$90,563	776,255	\$232,877	\$543,379
3405	1,240,671	4.5	275,705	13,785	\$4,136	\$9,650	82,711	\$24,813	\$57,898
3406	551,337	0.4	1,378,343	68,917	\$20,675	\$48,242	413,503	\$124,051	\$289,452
3407	176,049	0.25	704,198	35,210	\$10,563	\$24,647	211,259	\$63,378	\$147,882
3407	705,848	0.4	1,764,621	88,231	\$26,469	\$61,762	529,386	\$158,816	\$370,570
Total			91,170,438	4,558,522	\$1,367,557	\$3,190,965	27,351,132	\$8,205,339	\$19,145,792

Table 19: Upper and lower estimates for relabelling of cosmetic products imported from the EU calculated from proxy volume

E.4 Estimated costs to for each cosmetic class - final estimated value

HS Code	Product value	Est. Price per unit	Unit import no. per year	5% relabelled	Re-labelling cost \$0.5 per unit
3301	\$16,894,618	\$7.00	2,413,517	120,676	\$60,338
3302	\$15,988,947	\$7.00	2,284,135	114,207	\$57,103
	\$425,929	\$7.00	60,847	3,042	\$1,521
3303	\$238,484,406	\$15.00	15,898,960	794,948	\$397,474
3304	\$58,315,225	\$5.00	11,663,045	583,152	\$291,576
	\$209,271,991	\$5.00	41,854,398	2,092,720	\$1,046,360
3305	\$98,895,078	\$6.50	15,214,627	760,731	\$380,366
3306	\$26,600,311	\$2.50	10,640,124	532,006	\$266,003
	\$2,599,480	\$0.65	3,999,200	199,960	\$99,980
3307	\$38,233,321	\$4.00	9,558,330	477,917	\$238,958
3401	\$11,580,543	\$4.00	2,895,136	144,757	\$72,378
	\$17,126,055	\$4.00	4,281,514	214,076	\$107,038
	\$36,961,566	\$4.00	9,240,392	462,020	\$231,010
3402	\$64,772,494	\$8.00	8,096,562	404,828	\$202,414
	\$35,662,040	\$3.50	10,189,154	509,458	\$254,729
3403	\$7,396,366	\$5.00	1,479,273	73,964	\$36,982
	\$24,792,626	\$10.00	2,479,263	123,963	\$61,982
3404	\$5,309,276	\$20.00	265,464	13,273	\$6,637
3405	\$6,535,755	\$5.00	1,307,151	65,358	\$32,679
3406	\$2,013,705	\$3.50	575,344	28,767	\$14,384
3407	\$5,008,260	\$3.00	1,669,420	83,471	\$41,736
			156,065,857	7,803,293	\$3,901,646

Table 20: Estimated cost for relabelling of cosmetic products imported from the EU calculated from proxy cost (assuming 5% of units are relabelled at a cost of \$0.5/unit)

E.5 Beverage import costs and volumes from the EU

HS Code	Description	Product Value \$	Product Volume	Unit
2201	Waters, including natural or artificial mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavoured; ice and snow	\$36,290,497	0	Not Recorded
2202	Waters, including mineral and aerated waters, containing added sugar or sweetening matter, flavoured; other non-alcoholic beverages, not including fruit or vegetable juices of heading no. 2009	\$84,333,992	39,113,090	Litres
2203	Beer made from malt	\$947,815	69,989,888	Litres
		\$110,939,130	25,19,528	Litres Alcohol
2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading no. 2009	\$349,245,890	31,667,483	Litres
		\$107,866	717	Litres Alcohol
2205	Vermouth and other wine of fresh grapes, flavoured with plants or aromatic substances	\$1,708,388	530,858	Litres
		\$256,992	4,773	Litres Alcohol
2206	Fermented beverages, n.e.c. in chapter 22; (e.g. cider, perry, mead)	\$19,423,818	17,547,615	Litres
		\$16,558,835	282,282	Litres Alcohol
2207	Ethyl alcohol, undenatured; of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	\$1,900	75	Litres
		\$271,003	99,521	Litres Alcohol
2208	Ethyl alcohol, undenatured; of an alcoholic strength by volume of less than 80% volume; spirits, liqueurs and other spirituous beverages	\$282,281,221	12,364,532	Litres Alcohol
2209	Vinegar and substitutes for vinegar obtained from acetic acid	\$12,853,929	4,997,967	Litres

Table 21: EU imports to Australia in 2015, HS Code 22

E.6 Proxy products for each beverage class

HS Code	Description	Proxy Product	Proxy Product Source	Proxy Product Indicative Price	Proxy Product Vol. per unit
2203	Beer made from malt	Stella Artios (one bottle)	https://www.danmurphys.com.au/product/DM_72869/stella-artois-bottles	\$4.49	330ml
2204	Wine of fresh grapes, including fortified wines; grape must other than that of heading no. 2009	Cabernet Sauvignon - Rawson's Retreat - Penfolds	https://shop.coles.com.au/a/a-national/product/penfolds-rawsons-retreat-cabernet-sauvignon	\$11.77	750ml
2205	Vermouth and other wine of fresh grapes, flavoured with plants or aromatic substances	Original French Dry Vermouth - Noilly Prat	https://www.danmurphys.com.au/product/DM_2025/noilly-prat-original-french-dry-vermouth	\$29.99	750ml
2206	Fermented beverages, n.e.c. in chapter 22; (e.g. cider, perry, mead)	Vietnamese Street Food Series Cider - Cheeky Rascal	https://www.danmurphys.com.au/product/DM_ER_1000005192_CR5SFVIET/cheeky-rascal-vietnamese-street-food-series-cider-500ml	\$7.00	500ml
2207	Ethyl alcohol, undenatured; of an alcoholic strength by volume of 80% vol. or higher; ethyl alcohol and other spirits, denatured, of any strength	Methylated Spirits - Coles	https://shop.coles.com.au/a/a-national/product/coles-smart-buy-methylated-spirits	\$5.00	1000ml
2208	Ethyl alcohol, undenatured; of an alcoholic strength by volume of less than 80% volume; spirits, liqueurs and other spirituous beverages	Vodka - Smirnoff	https://www.danmurphys.com.au/product/DM_19252/smirnoff-red-label-vodka-700ml	\$36.95	750ml
2209	Vinegar and substitutes for vinegar obtained from acetic acid	White Vinegar - Cornwells	https://shop.coles.com.au/a/a-national/product/cornwells-vinegar-white-156768p	\$3.41	750ml

Table 22: Proxy products for selected beverage classes (excluding 2201 and 2202)

E.7 Estimated costs to industry for each beverage class – boundary cases

HS Code	Product value	Est. Price per unit	Unit import no. per year	Units affected when 0.1% relabelled	Re-labelling cost \$0.3 per unit	Re-labelling cost \$0.7 per unit	Units affected when 1% relabelled	Re-labelling cost \$0.3 per unit	Re-labelling cost \$0.7 per unit
2203	\$947,815	\$3.00	315,938	316	\$95	\$221	3,159	\$948	\$2,212
	\$110,939,130	\$3.00	36,979,710	36,980	\$11,094	\$25,886	369,797	\$110,939	\$258,858
2204	\$349,245,890	\$8.50	41,087,752	41,088	\$12,326	\$28,761	410,878	\$123,263	\$287,614
	\$107,866	\$8.50	12,690	13	\$4	\$9	127	\$38	\$89
2205	\$1,708,388	\$6.50	262,829	263	\$79	\$184	2,628	\$788	\$1,840
	\$256,992	\$6.50	39,537	40	\$12	\$28	395	\$119	\$277
2206	\$19,423,818	\$1.00	19,423,818	19,424	\$5,827	\$13,597	194,238	\$58,271	\$135,967
	\$16,558,835	\$1.00	16,558,835	16,559	\$4,968	\$11,591	165,588	\$49,677	\$115,912
2207	\$1,900	\$3.00	633	1	\$0	\$0	6	\$2	\$4
	\$271,003	\$3.00	90,334	90	\$27	\$63	903	\$271	\$632
2208	\$282,281,221	\$20.00	14,114,061	14,114	\$4,234	\$9,880	141,141	\$42,342	\$98,798
2209	\$12,853,929	\$2.50	5,141,572	5,142	\$1,542	\$3,599	51,416	\$15,425	\$35,991
Total			134,027,710	134,028	\$40,208	\$93,819	1,340,277	\$402,083	\$938,194

Table 23: Upper and lower estimates for relabelling of beverage products imported from the EU calculated from proxy costs

HS Code	Product vol.	Est. Price per unit	Unit import no. per year	Units affected when 0.1% relabelled	Re-labelling cost \$0.3 per unit	Re-labelling cost \$0.7 per unit	Units affected when 1% relabelled	Re-labelling cost \$0.3 per unit	Re-labelling cost \$0.7 per unit
2203	69,989,888	0.33	212,090,570	212,091	\$63,627	\$148,463	2,120,906	\$636,272	\$1,484,634
	2,519,528	0.33	7,634,934	7,635	\$2,290	\$5,344	76,349	\$22,905	\$53,445
2204	31,667,483	0.75	42,223,311	42,223	\$12,667	\$29,556	422,233	\$126,670	\$295,563
	717	0.75	957	1	\$0	\$1	10	\$3	\$7
2205	530,858	2	265,429	265	\$80	\$186	2,654	\$796	\$1,858
	4,773	2	2,387	2	\$1	\$2	24	\$7	\$17
2206	17,547,615	1	17,547,615	17,548	\$5,264	\$12,283	175,476	\$52,643	\$122,833
	282,282	1	282,282	282	\$85	\$198	2,823	\$847	\$1,976
2207	75	1	75	0	\$0	\$0	1	\$0	\$1
	99,521	1	99,521	100	\$30	\$70	995	\$299	\$697
2208	12,364,532	0.85	14,546,508	14,547	\$4,364	\$10,183	145,465	\$43,640	\$101,826
2209	4,997,967	1	4,997,967	4,998	\$1,499	\$3,499	49,980	\$14,994	\$34,986
Total			299,691,555	299,692	\$89,907	\$209,784	2,996,916	\$899,075	\$2,097,841

Table 24: Upper and lower estimates for relabelling of beverage products imported from the EU calculated from proxy volume

Note: Assuming the proxy product values (cost and volume/weight) are feasible, then the number of units imported calculated by either cost or volume should be the same. However, there are some discrepancies between Tables 23 and 24, particularly with HS Code 2203 and to a lesser extent 2206.

E.8 Estimated costs to for specific beverage classes - final estimated value

HS Code	Product value	Proxy Product Indicative Price (\$)	Unit import no. per year based on value	% relabelled	no. relabelled	20% sector impacted	Re-labelling cost \$0.5 per unit
2204	\$349,245,890	\$8.50	41,087,752	4%	1,643,510	328,702	\$164,351
	\$107,866	\$8.50	12,690	4%	508	102	\$51
2208	\$282,281,221	\$20.00	14,114,061	12%	1,693,687	338,737	\$169,369
Total			55,201,813		3,337,197	667,439	\$333,720

Table 25: Estimated cost for relabelling of beverage products imported from the EU calculated from proxy cost, assuming 4% of units from HS 2204 and 12% of units from HS 2208 are relabelled at a cost of \$0.5/unit. Additionally, it is assumed that only 20% of sector impacted by relabelling.