

Review of the National Trade Measurement System

Discussion Paper



June 2006

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1. Introduction



Under the Australian Constitution the Australian Government has power to legislate for trade measurement (weights and measures) but has preferred to retain the pre-existing arrangements of State-based enforcement through complementary Commonwealth and State legislation.

The 1985 Scott Review of the Trade Measurement System recommended a national approach to the administration of trade measurement. However, the Commonwealth, States and Territories opted to implement separate yet uniform legislation according to the legislative model set out in the Uniform Trade Measurement Legislation (UTML).

The 1995 Kean Inquiry into Australia's Standards and Conformance Infrastructure noted a significant decline in the trade measurement system and the continuing lack of uniform implementation of trade measurement legislation and administrative requirements. More than a decade later, not all States have implemented UTML and subsequent amendments to the UTML have resulted in less than uniform implementation.

In 2004, the Ministerial Council for Consumer Affairs (MCCA) agreed to review the Trade Measurement Administration system and charged the Standing Committee of Officials of Consumer Affairs (SCOCA) with that task.

On 10 February 2006 the Council of Australian Governments (COAG) issued a communiqué stating that the Prime Minister, State Premiers and Territory Chief Ministers are to work together to deliver substantial new National Reform Agenda embracing human capital, competition and regulatory reform. In respect of the regulatory reform objectives, COAG agreed to address six priority cross-jurisdictional hotspot areas where overlapping and inconsistent regulatory regimes are impeding economic activity, including national trade measurement.

Booz Allen Hamilton and J M Bennett Consulting (the Consultants) have been engaged by SCOCA to consult with stakeholders, develop and analyse options, and make recommendations for a national system of trade measurement.

The outcomes of this Review will have implications for manufacturers, certifiers, owners and operators of instruments used for trade (including producers of pre-packaged products), as well as consumers and all Australian governments. To ensure that the Review process identifies and addresses all stakeholder issues, the Consultants are inviting written or personal submissions from interested parties. Stakeholders wishing to contribute to this Review are encouraged to read this Discussion Paper before making a submission. Information on how to make a submission is provided at the end of this paper.

2. Terms of Reference



The Review of the National Trade Measurement System is to:

1. assess current arrangements for trade measurement administration with regard to the roles of the States, Territories and Commonwealth and New Zealand;
2. provide options for national, and where possible, trans-Tasman harmonisation of the administration of trade measurement, with regard to roles, responsibilities, decision making, and cost recovery, including but not limited to:
 - Option 1:* Partial National Legislation, based on the UTML, with consistent state and territory Administration Acts,
 - Option 2:* Full National Legislation, including administration aspects, with state and territory administration,
 - Option 3:* National Legislation with contracted administration undertaken by states and territories, and
 - Option 4:* National Legislation and administration;
3. assess the benefits and costs of each option having regard to the direct impact on government and the broader impact on economies;
4. recommend a preferred option; and
5. identify transitional costs associated with the recommendation.

The Review is to consider ways that regulatory impact analysis can be applied to the decision making processes in trade measurement, as per the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies, to ensure that compliance costs for business and consumers are considered in any decisions. This should include the decision making process for the extension of trade measurement inspection to new areas such as quality measures.

The Review is required to meet the requirements of COAG that requested MCCA to:

- (a) develop a recommendation for introducing a national system of trade measurement that would rationalise the different regulatory regimes of the Commonwealth, States and Territories and streamline the present arrangements for cost recovery and the certification of trade measuring instruments; and
- (b) report back to COAG with its recommendations and a proposed timeline for implementation for COAG consideration before the end of 2006.

3. The Current Administrative Arrangements



3.1 Trade Measurement Legislation

Under the Australian Constitution, the Australian Government has the power to make laws with respect to weights and measures. *The National Measurement Act 1960* (with its associated regulations) prescribes Australian legal units of measurement and provides for the maintenance of national primary standards of measurement, pattern approval of measuring instruments, and legal traceability of measurements to national standards. The National Measurement Institute (NMI) – a division of the Department of Industry, Tourism and Resources – is currently responsible for administering the *National Measurement Act 1960*.

As the Australian Government has not enacted trade measurement legislation, the current responsibility for such legislation, and its enforcement, is with the States and Territories. In 1990, all States and Territories (except Western Australia) agreed to enact and maintain model UTML in order to remove any inconsistencies. Western Australia has since committed to enacting the UTML and is currently in the process of doing so.

The UTML controls:

- ▶ the approval and usage of measuring instruments in use for trade;
- ▶ the operation of public weighbridges and their operators;
- ▶ transactions by measurement;
- ▶ packaging and marking of pre-packaged articles;
- ▶ licensing of measuring instrument servicing persons and public weighbridges;
- ▶ the powers of inspectors; and
- ▶ other associated miscellaneous matters.

Although all jurisdictions have similar trade measurement acts and regulations based on the UTML, inconsistencies occur due to the difficulty of synchronising the enactment and amendment of legislation in all jurisdictions.

3.2 Trade Measurement Operations

All States and Territories currently have separate Trade Measurement Administration Acts and Regulations. The resulting differences in administrative systems, inspection

regimes and cost-recovery policies can impede economic activity and create inefficiencies in the delivery of services. For example:

- ▶ it is difficult to achieve a coordinated approach to decision-making and policy development;
- ▶ national retailers may need to consult multiple jurisdictions for approval to implement new selling methods for particular products;
- ▶ differences in interpretation and enforcement of some aspects of the legislation can create industry confusion;
- ▶ each jurisdiction needs to maintain expertise in all aspects of trade measurement, including highly specialised technical areas;
- ▶ licensed certifiers of trade measuring instruments who operate across State borders must pay licence fees and comply with different reporting requirements in each jurisdiction;
- ▶ fees for verification and certification differ between jurisdictions – businesses with instruments in different jurisdictions pay different fees;
- ▶ in rural and remote areas, State boundaries can be a barrier to the efficient delivery of services by trade measurement authorities;
- ▶ the harmonisation of trade measurement systems between Australia and New Zealand may be constrained by the legislative and administrative differences within Australia; and
- ▶ it is difficult for Australia to enter into national mutual recognition arrangements with other countries on trade measurement matters (eg on the batch testing of bottled wine) which could reduce costs for exporters and importers.

It is the purpose of this review to assess the impact of the inconsistent State-based administrative arrangements on industry, government and consumers, and to examine ways in which the various trade measurement operations may be streamlined and made more efficient at a national level.

3.3 Calibration and Testing Services

State and Territory trade measurement authorities currently maintain State primary standards of measurement and provide calibration services as part of the national system for dissemination of standards. They also provide a range of testing services to local industry.

Under current administrative arrangements, the laboratories are an integral part of the trade measurement operation in most jurisdictions. Any changes in trade measurement roles and responsibilities arising from this review could have implications for the future ownership and operation of the existing laboratories, and national delivery of services.

4. Towards a National Trade Measurement System



4.1 Elements of the Trade Measurement System

Administration of the trade measurement system encompasses specific responsibilities for:

- ▶ legislation;
- ▶ policy development;
- ▶ enforcement of legislation;
- ▶ verification, re-verification and certification of instruments;
- ▶ dissemination of standards;
- ▶ technical support to industry; and
- ▶ advice to business and consumers.

This review provides an opportunity to look at appropriate administrative arrangements for each of these functions separately, with particular regard to:

- ▶ the type of expertise and infrastructure required;
- ▶ linkages with other functions;
- ▶ stakeholder issues;
- ▶ relevance to Ministerial portfolios (e.g. consumer affairs and industry);
- ▶ ways of achieving a national approach; and
- ▶ the costs and benefits of implementing a national approach.

As a starting point for the review, the Consultants have been asked to consider the following four options identified by SCOCA for national harmonisation of trade measurement administration:

- ▶ *Option 1:* Partial National Legislation, based on UTML, with consistent State and Territory Administration Acts;
- ▶ *Option 2:* Full National Legislation, including administrative aspects, with State and Territory administration;
- ▶ *Option 3:* Full National Legislation with contracted administration undertaken by States and Territories; and
- ▶ *Option 4:* National Legislation and Administration.

These four options, and some of the potential benefits to industry and implications for governments, are discussed below.

4.2 Option 1: Partial National Legislation based on UTML, with consistent State and Territory Administration Acts

Under this option the Australian Government would enact Commonwealth trade measurement legislation, based on the UTML, and would maintain and amend this legislation under a formal agreement with the States and Territories. This legislation would replace the separate State and Territory Trade Measurement Acts and Regulations.

Existing consultative mechanisms involving the Australian Government and State and Territory Governments, including SCOCA, would continue to operate as they do currently.

The States and Territories would continue to fund and administer the trade measurement system and would retain separate Administration Acts, but would work together to develop consistent Trade Measurement Administration Acts.

Potential Benefits:

This option could:

- ▶ provide a uniform trade measurement act and regulations for the whole of Australia;
- ▶ streamline future legislative amendments as only one set of legislation (instead of eight) will need to be changed; and
- ▶ provide greater consistency in government administrative procedures, fees and charges.

Potential Implications for Governments:

Under this option:

- ▶ the Australian Government would take on the responsibility for new legislation;
- ▶ States would be required to administer (and enforce) Commonwealth law;
- ▶ States and Territories would save costs associated with the maintenance of their separate Trade Measurement Acts and Regulations; and
- ▶ States and Territories would be expected to align their administrative procedures and charges

4.3 Option 2: Full National Trade Measurement Legislation with State and Territory Administration

Under this option the Australian Government would enact national trade measurement legislation (based on UTML) that would also incorporate national administrative provisions to replace those contained in the various State and Territory Trade Measurement Administration Acts and Regulations.

The Australian Government would maintain and amend legislation, in consultation with State and Territory Governments, and would provide assistance in the interpretation and application of the legislation. The States and Territories would administer the legislation on behalf of the Australian Government under a formal agreement, and SCOCA and TMAC would continue to provide formal consultation mechanisms.

The national legislation would also provide for a national licensing scheme for certifiers of instruments used for trade.

Responsibility for the national licensing scheme (including the training, licensing and technical support of certifiers of instruments) would be transferred to the Australian Government, possibly to NMI or to a specific unit within the Department of Industry, Tourism and Resources.

State and Territory trade measurement authorities would remain responsible for auditing the work of certifiers in the field.

States and Territories would retain operational control over the delivery of services and the setting of enforcement policies and priorities within their own jurisdictions.

Potential Benefits:

In addition to the benefits offered by Option 1, Option 2 could:

- ▶ provide national uniformity in trade measurement administrative legislation, including fees and charges;
- ▶ provide industry and consumers with a single point of contact within the Australian Government for advice on the interpretation of the legislation;
- ▶ enable certifiers of instruments to operate throughout Australia under a single licence and reporting system;
- ▶ deliver net savings in administrative costs by replacing eight licensing systems with one;
- ▶ enable the Australian Government to negotiate mutual recognition arrangements with other countries; and
- ▶ partially address issues of non-uniformity in inspection and enforcement procedures.

Potential Implications for Governments

Under this option:

- ▶ the Australian Government would take responsibility for the development and maintenance of a National Trade Measurement Act;
- ▶ all jurisdictions would need to reach agreement on uniform administrative legislation, which would have policy and financial implications for all States and Territories;

- ▶ the Australian Government would establish a national instrument certification scheme and would collect licence fees to cover costs; and
- ▶ States and Territories would relinquish responsibility for licensing of certifiers, and would lose the associated revenue stream.

4.4 Option 3: National Legislation with Contracted Administration

Under this option the Australian Government would enact full national trade measurement legislation (as for Option 2) and would take responsibility for the trade measurement system. The delivery of services would be contracted out to the State and Territory governments, in order to utilise existing expertise and organisational networks. The States and Territories would continue to own and operate the trade measurement infrastructure necessary for them to perform their contracted services.

The Australian Government would provide funding for an agreed level of service in each jurisdiction, which would reflect both local and national enforcement and service priorities. There may be an expectation that the States and Territories would continue to contribute some funding.

It is envisaged that a small national policy and coordination unit would be established within the Department of Industry, Tourism and Resources, or The Treasury.

Potential Benefits

In addition to the benefits delivered by Option 2, Option 3 could:

- ▶ enable the Australian Government, in consultation with the States and Territories, to develop national trade measurement policies and strategies; and
- ▶ improve national responsiveness to emerging or critical issues.

Potential Implications for Governments

Under this option:

- ▶ the Australian Government would take on significant new policy and management responsibilities for the national trade measurement system, which could require new appropriation funding and/or cost recovery arrangements;
- ▶ the Australian Government would negotiate contractual arrangements with each State and Territory Government;
- ▶ States and Territories would have a reduced level of local operational control; and
- ▶ States and Territories would no longer be responsible for revenue generation.

4.5 Option 4: National Legislation and Administration

Under this option the Australian Government would take full responsibility for the legislation, administration and funding of the national trade measurement system.

The Australian Government would establish a national agency with responsibility for inspection, auditing the work of certifiers, enforcement of the national legislation, and the provision of technical and advisory services. It could acquire the necessary infrastructure from the States and Territories and would need to establish regional offices and facilities from which to deliver national services and to meet the specific needs of local industry. Existing trade measurement personnel could be offered employment by the Australian Government.

The national agency could be located within the Department of Industry, Tourism and Resources or The Treasury. Alternatively, if the mutual benefits of harmonisation of trade measurement with New Zealand were significant enough to warrant it, the agency could be established as bi-national body, similar in concept to Food Safety Australia New Zealand (FSANZ).

Potential Benefits

In addition to the benefits of Option 2, Option 4 could:

- ▶ enable the Australian Government to design, develop and manage a national trade measurement system to meet industry and consumer needs;
- ▶ enable the Australian Government to fully implement national trade measurement policies and strategies;
- ▶ provide industry and consumers with a single point of contact for trade measurement advice, education and services;
- ▶ provide a uniform approach to service delivery and market surveillance across Australia;
- ▶ offer improved career opportunities for staff and create a critical mass for effective skills development and succession planning in the longer term; and
- ▶ potentially deliver savings through some rationalisation of facilities and service centres across the country.

Potential Implications for Governments

Under this option:

- ▶ the Australian Government could establish a new agency with staff and facilities in all States and Territories ;
- ▶ there could be some loss of existing expertise during the transition, and it could take time to recruit and train a new workforce; and
- ▶ State and Territory governments would have no further role in trade measurement.

5. Making a Submission



Submissions are invited from all interested stakeholders.

Industry and business organisations are requested to use the attached Response Template, as this will greatly assist the interpretation and analysis of stakeholder needs and benefits. Additional information may be attached.

Consumer groups and individuals are encouraged to make written submissions that address the issues and options outlined in this paper.

Organisations or individuals who wish to arrange a meeting with the Consultants or seek clarification of any matters relating to the review, should contact the consultants via email at: trade_measurement@bah.com.

Written submissions must be received by close of business on **30th June 2006**.

Submissions may be sent by email to: trade_measurement@bah.com or mailed to:

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