

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 179**

Issued by the Authority of the Minister for Innovation, Industry, Science  
and Research

*National Measurement Act 1960*

*National Measurement Amendment Regulations 2010 (No. 1)*

The principal objects of the *National Measurement Act 1960* (the Act) are to:

- establish a national system of units and standards of measurement of physical quantities;
- provide for the uniform use of those uniform units and standards of measurement throughout Australia;
- co-ordinate the operation of the national system of measurement;
- provide for a system of verification of utility meters used for trade; and
- provide the legal framework for a national system of trade measurement.

Section 20 of the Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *National Measurement Regulations 1999* (the Principal Regulations) were made to support the establishment of the Commonwealth measurement system.

The purpose of the Regulations is to amend the Principal Regulations to extend the facilities provided by the existing provisions to enable artefacts as well as standards to be verified for legal purposes. The Regulations also reflect amendments which are anticipated to be made to the Act by the *National Measurement Amendment Act 2010*, which further clarify the terminology associated with the certification of reference materials.

The Regulations also make consequential changes to reflect the fact that a number of matters previously dealt with in the Principal Regulations are now covered by the *National Trade Measurement Regulations 2009*.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

In accordance with section 17 of the *Legislative Instruments Act 2003*, consultation was undertaken with a number of relevant stakeholders in respect of the Regulations. In particular, the changes to the certification nomenclature and the extension of existing facilities to include the verification of artefacts were developed following the National Measurement Institute's routine interaction with its stakeholders. The

Weighing Industry Association of Australia and the Petroleum Industry Contractors Association were consulted in relation to the increases to fees.

We have also consulted with the Office of Best Practice Regulation and they have advised that a Regulation Impact Statement was not required.

Regulations 1 to 3, regulation 5 and Schedule 1 commence on 1 July 2010, and regulation 4 and Schedule 2 commence on the commencement of Schedule 1 to the *National Measurement Amendment Act 2010*.

## ATTACHMENT

### Details of the *National Measurement Amendment Regulations 2010 (No. 1)*

#### Regulation 1 – Name of Regulations

This regulation specifies the name of the Regulations as the *National Measurement Amendment Regulations 2010 (No. 1)*.

#### Regulation 2 - Commencement

Regulation 2 provides that regulations 1 to 3, regulation 5 and Schedule 1 commence on 1 July 2010, and regulation 4 and Schedule 2 commence on the commencement of Schedule 1 to the *National Measurement Amendment Act 2010*.

#### Regulation 3 – Amendment of *National Measurement Regulations 1999*

This regulation provides that Schedule 1 amends the *National Measurement Regulations 1999* (the Principal Regulations).

#### Regulation 4 – Amendment of *National Measurement Regulations 1999*

This provides that Schedule 2 amends the Principal Regulations.

#### Regulation 5 - Transitional

Regulation 5 provides for the definition of 'certification' to continue to have effect in relation to applications for certification of measuring instruments in use for trade under relevant state and territory legislation before the commencement of the Regulations. This is necessary in order for such certifications to be subject, where appropriate, to the maximum permissible errors prescribed in the Principal Regulations for measuring instruments in use for trade.

The repeal of paragraph (b) of the definition of 'certification' in regulation 3 of the Principal Regulations, and these transitional arrangements, are a necessary consequence of the transition to a national trade measurement system from 1 July 2010 (the transition day). On that day, responsibility for trade measurement will pass from the states and territories to the Commonwealth under relevant provisions of the *National Measurement Act 1960* (the Act) and the *National Trade Measurement Regulations 2009* which will come into effect on 1 July 2010 (see Schedule 1, item 3).

#### Schedule 1 – Amendments

These amendments commence in accordance with regulation 2 (on 1 July 2010).

#### **Item 1 - Regulation 3, definition of *artefact***

This item inserts a definition of a new term, 'artefact'. The term 'artefact' will give effect to amendments to the Act that will enable single measurements of physical

quantities of artefacts to be made by verifying authorities for reference standards of measurement for legal purposes (see item 10). An artefact is a physical object that is not a standard of measurement; for example, a common item for which the weight or size needs to be ascertained for a legal purpose (such as the dimensions or weight of a parcel for freight, or the length, width, height or weight of a motor vehicle or its load), to assist in the resolution, settlement or litigation of a possible breach of contract or compensation for injury action.

**Item 2 - Regulation 3, definition of *certificate of verification***

This item extends the definition of 'certificate of verification' to include certificates for single measurements of physical quantities of artefacts issued by verifying authorities under new regulation 34C (see item 10).

Regulation 13 of the Principal Regulations currently provides for the verifying authority to issue certificates of verification in respect of standards of measurement, which are then recognised as evidence under regulation 90. New regulation 34C is an equivalent provision which provides for the verifying authority to issue a certificate of verification in relation to physical quantities of artefacts. This item would ensure that certificates under regulation 34C are also recognised as certificates of verification under the Principal Regulations and that these certificates can be used as prima facie evidence of single measurements of physical quantities of artefacts made by verifying authorities.

**Item 3 - Regulation 3, definition of *certification***

This item amends the definition of 'certification' in the Principal Regulations to exclude the certification of measuring instruments for use for trade under relevant State and Territory legislation from 1 July 2010 onwards.

The new definition of 'certification' will refer to regulation 37 for measuring instruments and regulation 48 for reference materials. This amendment is a necessary consequence of the transition to a national trade measurement system from 1 July 2010 (the transition day), when responsibility for the certification of measuring instruments for use for trade will pass from the relevant state and territory instrumentalities and entities appointed by them to the Commonwealth. Appropriate transitional arrangements are made by regulation 5 of the Regulations.

**Item 4 - Regulation 3, definition of *certified reference material***

This item repeals the definition of 'certified reference material' in the Principal Regulations.

This definition will, on commencement of Schedule 2, be replaced with the term 'Australian certified reference material' in the national measurement legislation (see Schedule 2). Until that commencement, regulation 48 of the Principal Regulations still clearly provides for a definition of certified reference material.

**Item 5 - Regulation 3, definition of *maximum permissible error*, paragraph (b)**

This item is a consequential amendment made necessary by the provisions of the *National Trade Measurement Amendment Regulations 2010 (No. 1)* which will

transfer the prescription of maximum permissible errors for all measuring instruments in use for trade from Schedule 12 to the Principal Regulations to Schedule 1 to the *National Trade Measurement Regulations 2009*.

As a consequence, this item updates the cross references in this definition to refer to the two sources of prescribed maximum permissible errors for measuring instruments; that is, those in use for trade (Schedule 1 to the *National Trade Measurement Regulations 2009*) and those in use for other legal purposes (Schedule 12 of the Principal Regulations).

This amendment is part of a strategy to consolidate all the provisions for measuring instruments for use for trade into the *National Trade Measurement Regulations 2009* as part of the transition to a national trade measurement system from 1 July 2010.

#### **Item 6 - Regulation 3, definition of *verification***

This item expands the definition of the term 'verification' to include artefacts as well as reference standards of measurement.

This change is necessary to give effect to amendments to the Act facilitated by the *National Measurement Amendment Act 2010* which will commence after 1 July 2010 (see item 1).

#### **Item 7 - Regulation 3, definition of *verifying authority***

This item expands the definition of the term 'verifying authority' to enable verifying authorities to make single measurements of physical quantities of artefacts as well as verifying reference standards of measurement.

The revised definition gives effect to amendments to the Act facilitated by the *National Measurement Amendment Act 2010* which will enable verifying authorities for reference standards of measurement to also make single measurements of physical quantities of artefacts (see item 1).

#### **Item 8 - Subregulation 13(5)**

This item omits a redundant requirement in subregulation 13(5). That provision required a verifying authority which verified a standard of measurement to issue a certificate, which was already required by paragraph 13(1)(b). Subregulation 13(5) is unnecessary and is therefore removed by this item.

#### **Item 9 - Regulation 14**

This item amends the heading of regulation 14 of the Principal Regulations to reflect the fact that this regulation deals with notice requirements where there has been a delay in verifying a standard of measurement, as well as where a decision not to verify has been made.

#### **Item 10 - Part 3A – Artefacts**

This item inserts a new Part 3A, including new regulations 34A to 34E, in to the Principal Regulations that will give effect to amendments to the Act facilitated by the

*National Measurement Amendment Act 2010.* These provisions will enable verifying authorities for reference standards of measurement to also make single measurements of physical quantities of artefacts (see item 1). For example, a person might wish to have verified the weight or dimensions of items fabricated or purchased/supplied under a contract.

The provisions inserted will provide for a number of powers of verifying authorities in respect of measuring physical quantities of artefacts. They substantially replicate the powers that authorities have in respect of reference standards of measurement.

New regulation 34A will permit verifying authorities to verify physical quantities of artefacts by making single measurements of the physical quantities. It will require that verifying authorities appointed to make single measurements of physical quantities on artefacts conduct the verification in an appropriate way, having regard to the nature of the artefact, for example, by using a technique with an accuracy that is fit for the purpose for which the measurement is required.

New regulation 34B deals with applications for such a verification. Applications can be made to verifying authorities for the verification of a physical quantity of an artefact, provided that they are made in the form issued by the Chief Metrologist and that form is provided, with the artefact, to the verifying authority. If the verifying authority needs any further information not provided on the form in order to properly consider the application, the verifying authority can require the applicant, by written notice, to lodge the required information, and may refuse to consider the application until the information is provided.

New regulation 34C provides that the verifying authority may, on application under regulation 34B, verify a physical quantity of the artefact in response to the application. If the verifying authority does verify the physical quantity of the artefact, the verifying authority must issue a certificate of verification to the applicant, and may also provide a copy of the certificate to any other person the authority considers should be given a copy. For example, a regulator, arbitrator or adjudicator involved in the resolution of a dispute might be given a copy of the certificate.

The certificate must list the particulars specified in subregulation 34C(2), including details of the name and address of the verifying authority, the date, result and accuracy of the verification and details of the identifying mark associated with the artefact as well as details of any environmental or other influential facts relevant to the verification.

For these purposes, the Chief Metrologist will make written determinations setting out the manner in which the verifying authority must determine and report on the accuracy of verifications of artefacts.

Additionally, a verifying authority may not verify a physical quality of an artefact if the artefact does not bear an identifying mark.

New regulation 34D sets out notice requirements for verifying authorities in the event of refusal to verify an artefact or delay in verifying an artefact. That provision requires verifying authorities for artefacts to give an applicant written notice of the reason for not verifying an artefact if the verifying authority elects not to verify an

artefact. The notice must be provided as soon as practicable after the decision. The provision also permits an applicant to request that the verifying authority provide the applicant with written notice of a delay in making a decision if the artefact has not been verified (or notice provided of a refusal to verify) within 3 months of receipt of the application.

New regulation 34E allows for the verifying authority to mark an artefact that is not already marked with an identifying mark. Since regulation 34C will prohibit an authority from verifying an artefact that does not bear a mark, it is necessary for the authority to satisfy itself whether or not the artefact does bear such a mark. If it does not bear a mark, the verifying authority must mark the artefact with an identifying mark. If it is impractical to mark the artefact because of its shape, size or nature (for example, because the artefact is too small to make a noticeable mark), the verifying authority must attach a sealed container containing an identifying mark to the artefact instead.

#### **Item 11 - Regulation 38**

This item amends the heading of regulation 38 of the Principal Regulations to better reflect the provisions of the regulation, by referring to delay in certifying measuring instruments as well as decisions not to certify measuring instruments.

#### **Item 12 - Regulation 50**

This item amends the heading of regulation 50 of the Principal Regulations to better reflect the provisions of the regulation, by referring to delay in certifying reference materials as well as decisions not to certify reference materials.

#### **Item 13 - Regulation 62**

This item amends the heading of regulation 62 of the Principal Regulations to better reflect the provisions of the regulation, by referring to delay in approving measuring instruments as well as decisions not to approve measuring instruments.

#### **Item 14 - Paragraph 73(1)(a)**

This item expands the scope of regulation 73 of the Principal Regulations to enable verifying authorities to be appointed to make single measurements of physical quantities of artefacts as well as verifying standards of measurement.

Regulation 73 permits the Chief Metrologist to appoint verifying authorities capable of verifying a standard of measurement, or certifying a measuring instrument or reference material. The amendments to the Act facilitated by the *National Measurement Amendment Act 2010* will enable verifying authorities for reference standards of measurement to also make single measurements of physical quantities of artefacts (see item 1). Accordingly, this item replaces paragraph 73(1)(a) with a new paragraph requiring the Chief Metrologist to be satisfied that the authority is capable, or has direct control of staff who are capable, of verifying a standard of measurement or a physical quantity of an artefact, or certifying a reference material or a measuring instrument.

### **Item 15 - Subregulation 74(1)**

This item makes consequential changes to subregulation 74(1) to reflect the fact that verifying authorities will be able to be appointed to make single measurements of physical quantities of artefacts (see item 14).

Subregulation 74(1) of the Principal Regulations requires that an appointment as a verifying authority must state a number of details about the appointment. These include the kinds of reference standards of measurement to which the appointment applies, the range of denominations of standards of measurement that may be verified by the appointee, and the least uncertainty with which standards of measurement may be verified by the appointee. Since verifying authorities may be appointed to make single measurements of physical quantities of artefacts pursuant to item 14, it is necessary to recognise this in subregulation 74(1) by providing for the kinds of details that must be specified in the appointment.

This item requires that the appointment specify the kind or kinds of artefacts on which single measurements of physical quantities may be made, the range of denominations of the physical quantities which may be measured and the least uncertainty of such measurements.

### **Item 16 - Subregulation 74(2)**

This item permits verifying authorities appointed to verify artefacts under the new expanded regulation 73 to arrange for the testing of the artefact to be conducted by a third party who is under their supervision. This is consistent with the existing power of a verifying authority to arrange for the testing needed for verification of a standard of measurement to be conducted by another body or person under their supervision.

### **Item 17 - Subregulation 85(1)**

This item makes a consequential amendment to the reconsideration of decisions provision in regulation 85 to recognise two new decisions inserted by item 10 (a decision by a verifying authority to require further information before verifying an artefact (new subregulation 34B(4)), and a decision not to verify an artefact (new subregulation 34C(1)) that can be reconsidered by the decision maker on written request, and subsequently appealed to the Administrative Appeals Tribunal.

### **Item 18 - Regulation 87**

This item replaces a reference to Part VA in the Act with a reference to Part IV. Pursuant to 2008 amendments to the Act which commence on the transition day, Part IV is the correct numbering.

### **Item 19 - Subparagraph 87(d)(ii)**

This item replaces the reference in regulation 87 to Schedule 12 to the Principal Regulations with a reference to Schedule 1 to the *National Trade Measurement Regulations 2009*.

This item is a consequential amendment made necessary by the provisions of the *National Trade Measurement Amendment Regulations 2010 (No. 1)* which will

transfer the prescription of maximum permissible errors for all measuring instruments in use for trade from Schedule 12 to the Principal Regulations to Schedule 1 to the *National Trade Measurement Regulations 2009*.

#### **Item 20 - Regulation 89**

This item removes regulation 89. Pursuant to the *National Trade Measurement Amendment Regulations 2010 (No. 1)*, maximum permissible errors will be provided for in Schedule 1 to the *National Trade Measurement Regulations 2009* for all measuring instruments in use for trade. Accordingly, regulation 89 is no longer necessary.

#### **Item 21 - Regulation 90A**

This item repeals regulation 90A of the Principal Regulations.

The matters prescribed in regulation 90A were the requirements for identity cards for officers authorised to exercise enforcement powers under the Act. These requirements will now be prescribed in the *National Trade Measurement Regulations 2009* under the provisions of the *National Trade Measurement Amendment Regulations 2010 (No. 1)*, which will be made on or around the same time as these Regulations as part of the transition to a national trade measurement system from 1 July 2010.

#### **Item 22 - Schedule 12**

This item repeals the current Schedule 12, which sets out maximum permissible errors for measuring instruments in use for trade and any other legal purpose, and replaces it with a new Schedule prescribing the maximum permissible errors for legal measuring instruments alone; that is, measuring instruments for use for any legal purposes other than trade.

The maximum permissible errors for measuring instruments in use for trade will be prescribed in Schedule 1 to the *National Trade Measurement Regulations 2009* under the provisions of the *National Trade Measurement Amendment Regulations 2010 (No. 1)*, which will be made on or around the same time as these Regulations as part of the transition to a national trade measurement system from 1 July 2010.

#### **Item 23 - Schedule 13**

This item replaces the current Schedule 13, which provides for fees for regulatory measurement functions carried out by the National Measurement Institute (NMI) under the national measurement legislation. The revised Schedule is in the same form as the current Schedule and contains the same suite of items for which fees are levied. However, it amends the quantum of the fees to reflect the NMI's increased costs of providing these services in line with the *Australian Government Cost Recovery Guidelines*.

A Goods and Service Tax (GST) exemption has also been granted for the fees prescribed in this Schedule from 1 July 2010 under a Division 81 determination by the Australian Tax Office as they are levied for regulatory purposes.

The revised fees employ a more user-focussed approach, as some of the items are specified in the form of an hourly rate instead of a fixed fee to allow greater flexibility in the levying of the fees. This enables a lower fee to be charged for simple and well prepared applications for services from the NMI.

Some of the revised fees are specified in terms of the cost of a third party provider, together with an hourly rate for the NMI arranging for the services of the third party provider, instead of a fixed fee. This is also to allow greater flexibility in the levying of the fees and so that a lower fee may be charged wherever possible for services obtained from the NMI.

The removal of the GST component has resulted in a majority of the fixed-rate fees appearing to decrease by an average of approximately 6%. In effect these amendments represent average increases in fees of approximately 3% when the GST is factored out.

### Schedule 2 – Amendments

These amendments commence in accordance with regulation 2 (on the commencement of Schedule 1 to the *National Measurement Amendment Act 2010*).

#### **Item 1 - regulation 3, definition of *Australian certified reference material***

This item inserts a definition of 'Australian certified reference material', to give effect to amendments to the Act facilitated by the *National Measurement Amendment Act 2010* which will commence after 1 July 2010.

The term 'Australian certified reference material' is inserted consequential to amendments to the Act intended to further clarify the terminology in the national measurement legislation. This term will replace the term 'certified reference material' in the Principal Regulations.

The definition will cover the same materials as the definition of 'certified reference material'.

#### **Item 2 - Further amendments - Australian certified reference material**

This item amends references to 'certified reference material' in a number of regulations, by changing them to references to 'Australian certified reference materials' in appropriate parts of the Principal Regulations.

These changes give effect to the adoption of the term 'Australian certified reference material' in the Act (see item 1) under amendments made by the *National Measurement Amendment Act 2010*.