

EXPLANATORY STATEMENT

Select Legislative Instrument No. 101, 2014

National Trade Measurement Amendment (2014 Measures No.1) Regulation 2014

National Measurement Act 1960

National Trade Measurement Regulations 2009

Authority and Background

The objectives of the *National Measurement Act 1960* (the Act) include to:

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

Subsection 20(1) 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 or carrying out or giving effect to the Act. The *National Trade Measurement Regulations 2009* (the Principal Regulations) support the national trade measurement system.

Section 33(3) of the *Acts Interpretation Act 1901* provides that where an act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws) the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

The *National Trade Measurement Amendment (2014 Measures No.1) Regulation 2014* (the Amending Regulation) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Purpose and operation

The Amending Regulation better implements the original intention of the Act by aligning the Principal Regulations with current industry practices and consumer expectations. This is achieved by a number of measures, including:

- prescribing a condition that all verifiers must have a current statement of attainment for each skill set or unit of competency, for the instruments they verify, to demonstrate a standard of skill, therefore providing consumer confidence in verifiers;
- requiring at least one operator at a public weighbridge to have a current statement of attainment demonstrating a minimum standard of skill, therefore providing consumer confidence in public weighbridge licensees;
- providing that an approach to a weighbridge must have a clearly marked perimeter where businesses are conducting axle weighing or end-and-end weighing, therefore better clarifying when the requirements of the Principal Regulations apply;
- allowing bed sheets, tarpaulins and other sheets of hemmed fabric to be marked with a measure marking of centimetres even where the length exceeds 100 centimetres, therefore aligning the Principal Regulations with industry practices and reducing the financial impost on industry;

- providing that the Secretary must publish ways that prepackages may be marked for sale if a significant proportion of merchants in Australia use that method, therefore providing industry with flexibility by allowing certain prepackages to be sold by reference to a variety of units of measurements;
- clarifying that the term “prepackage” in the Principal Regulations is synonymous with the term “packed in advance ready for sale” in the Act by aligning these definitions. This clarifies the operation of the Principal Regulations for industry, aligns the Principal Regulations with the Act and retains the use of terminology widely recognised and understood by the international measurement framework, as published in recommendations by the International Organization of Legal Metrology.

The Amending Regulation also ensures consistency of the Principal Regulations with the international measurement framework. This is achieved by aligning the Principal Regulations with the *World Wine Trade Group Agreement on Requirements for Wine Labelling* (the Treaty) in relation to the position of the measurement marking on wine bottles, therefore providing consistency between the Principal Regulations and the Treaty.

The Amending Regulation also makes minor amendments to the Principal Regulations to correct typographic errors and clarify some aspects of the national trade measurement system.

Detailed explanation of the Amending Regulation’s provisions

Section 1 – Name of Regulation

This section provides that the title of the Amending Regulation is the *National Trade Measurement Amendment (2014 Measures No. 1) Regulation 2014*.

Section 2 – Commencement

This section provides the commencement information in a two column table for the Amending Regulation.

Each section of the Amending Regulation specified in column 1 of the table commences (or would be taken to have commenced) in accordance with column 2 of the table.

The table has the effect of providing that:

- Schedule 2 commences on 1 January 2015.
- The remainder of the Amending Regulation will commence on 1 July 2014.

Section 3 – Authority

This section provides that the legislative authority for the making of the Amending Regulation is the Act.

Section 4 – Schedule(s)

This section provides that each instrument specified in a Schedule in the Amending Regulation is amended or repealed as provided for in the applicable Schedule and that any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments commencing 1 July 2014

Item 1 – Regulation 1.3

Regulation 1.3 provides that the Principal Regulations do not apply in relation to the position of measurement markings on standard-sized wine containers that are mentioned in the Treaty, signed on 23 January 2007.

Item 1 repeals regulation 1.3 (Application of Regulations — wine labelling) in the Principal Regulations in its entirety. Item 33 subsequently clarifies that measurement marking requirements under the Principal Regulations do not apply to certain wine bottles.

Item 2 – Regulation 2.38(3)(b)

Subregulation 2.38(3)(b) contains a typographic error as it refers to “2.27.”, rather than “2.27; or”. Item 2 corrects this typographic error.

Item 3 – Regulation 2.47

Item 3 repeals regulation 2.47, which prescribes the fee to be charged when a trade measurement inspector acting under section 18MK of the Act examines a measuring instrument and verifies its accuracy. This fee is based on a cost recovery basis and currently requires annual amendment to reflect increases to the fee resulting from inflation.

Item 3 also substitutes regulation 2.47 with new regulations 2.47 and 2.47A. Regulation 2.47 prescribes a fee of \$140 per hour and any other costs incurred, as the prescribed fee for verifying measuring instruments. Regulation 2.47A allows the prescribed fee in regulation 2.47 to be indexed according to the Consumer Price Index (CPI). A note is also inserted at the end of regulation 2.47 to clarify for industry and individuals that the prescribed fee may be subject to the Goods and Service Tax in certain circumstances.

Item 4 – Paragraph 3.4(1)(b)

Paragraph 3.4(1)(b) provides that an approach to a weighbridge must have a clearly marked perimeter. This requirement is important where businesses conduct axle weighing and end-and-end weighing. However, this requirement is not necessary for weighbridges which solely perform direct measurement of a vehicle.

Item 4 amends paragraph 3.4(1)(b) by clarifying that the requirement for a weighbridge to have a clearly marked perimeter only applies to a weighbridge used for axle weighing or end-and-end weighing.

Item 5 – Subparagraph 3.7(1)(c)(iii) (first occurring)

First occurring subparagraph 3.7(1)(c)(iii) currently provides that clearance from the external edges of a weighbridge platform must extend from the floor of the weighbridge to at least 1 metre above the platform. Item 5 deletes this first occurring subparagraph 3.7(1)(c)(iii) in its entirety because this subparagraph is redundant.

Item 6 – Subparagraph 3.41(2)(a)(ii)

Subparagraph 3.41(2)(a)(ii) contains a typographic error as it refers to “consecutively.”, rather than “consecutively; and”. Item 6 corrects this typographic error.

Item 7 – Subparagraph 3.62(b)(iv)

Subregulation 3.62(b)(iv) contains a typographic error as it refers to “ticket.” rather than “ticket;”. Item 7 corrects this typographic error.

Item 8 – Subparagraph 3.62(e)(v)

Subregulation 3.62(e)(v) contains a typographic error as it refers to “approaches.” rather than “approaches;”. Item 8 corrects this typographic error.

Item 9 – Regulation 4.1

Item 9 repeals regulation 4.1 in its entirety and is related to items 10, 11, 13, 17, 21, 23, 26 and 29.

There are two regulations in Part 4 which set out definitions for the purposes of Part 4 of the Principal Regulations. Some of these definitions are unused or out of date. To provide clarity and remove the unused definitions from Part 4, certain definitions in regulation 4.1 are repealed in their entirety, or moved and listed with the definitions in regulation 4.2, which is renamed as regulation 4.1 by item 10.

Item 10 – Regulation 4.2 (heading)

Item 10 repeals the heading “4.2 Definitions for Part 4–prepackages” and replaces it with “4.1 Definitions for Part 4”.

Item 11 – Regulation 4.2

Item 9 repeals the definition of **approved printing device** as part of repealing regulation 4.1 in its entirety. Item 11 inserts an identical definition for **approved printing device** into regulation 4.2, which becomes regulation 4.1 as provided in item 10.

Item 12 – Regulation 4.2 (definition of *average error*)

Item 12 repeals the definition of **average error** from regulation 4.2 in its entirety. This definition is redundant as it is not used in Part 4 of the Principal Regulations.

Item 13 – Regulation 4.2

Item 9 repeals the definition of **characters** from regulation 4.1 in its entirety. Item 13 inserts an identical definition for **characters** into regulation 4.2, which becomes regulation 4.1 as provided in item 10.

Item 14 – Regulation 4.2 (definitions of *compressed or liquefied gas, content and cream*)

Items 14, 52 and 53 are related. Item 14 repeals the definitions of **compressed or liquefied gas**, **content** and **cream** from regulation 4.2. These definitions are redundant as they are not used in Part 4 of the Principal Regulations.

The definitions of **compressed or liquefied gas** and **cream** are incorporated into Schedule 5 of the Principal Regulations by related items 52 and 53.

Item 15 – Regulation 4.2 (definition of *dried or dehydrated fruit*)

The word “fruit” in the definition of **dried or dehydrated fruit** in regulation 4.2 is not bolded as appropriate for a definition. Item 15 corrects this typographic error.

Item 16 – Regulation 4.2

Item 16 repeals the definitions of **garden landscape material** and **ice cream** from regulation 4.2.

The term **garden landscape material** is defined in regulation 4.2 and used in clause 5.8 of Schedule 4 of the Principal Regulations. However, clause 5.8 of Schedule 4 provides a more expansive description of “garden landscape materials” than the definition in regulation 4.2. This inconsistency gives the impression that there are two different definitions for “garden landscape material” in the Principal Regulations. This causes confusion for businesses and industry when trying to determine which garden landscape materials are exempt from marking requirements for prepackaged goods under Divisions 4.3 and 4.4 of the Principal Regulations. Item 16 removes this inconsistency by deleting this definition from regulation 4.2, while item 50 inserts a more detailed description of “garden landscape material” in clause 5.8 of Schedule 4.

The term *ice cream* is redundant as it is not used in Part 4 of the Principal Regulations. Items 45 and 54 incorporate the substance of the definition of *ice cream* into Schedule 4 and Schedule 5 of the Principal Regulations.

Item 17 – Regulation 4.2

Item 9 repeals the definition *inadequate prepackage* as part of repealing regulation 4.1 in its entirety. Item 17 inserts an equivalent definition into regulation 4.2, which becomes regulation 4.1 as provided by item 10.

Item 18 – Regulation 4.2 (definition of *individual prepackage error*)

Item 18 repeals the definition of *individual prepackage error* from regulation 4.2. This definition is redundant as it is not used in Part 4 of the Principal Regulations.

Item 19 – Regulation 4.2 (definition of *inspection lot*)

Item 19 and 37 are related. Item 19 repeals the current definition of *inspection lot* from regulation 4.2 and substitutes it with a new definition. This amendment clarifies the deficiency that is permitted for prepackages.

The defined term *inspection lot* and the defined term *lot of packages* are used interchangeably in Part 4 of the Principal Regulations, even though the definition for each defined term is different. This creates confusion for industry and businesses who try to comply with Average Quantity System (AQS) thresholds for prepackages. It also creates confusion for Trade Measurement Inspectors who enforce the Principal Regulations. Item 37 repeals the definition *lot of packages* as part of repealing the entirety of regulation 4.33. Item 19 clarifies the position for industry, businesses and Trade Measurement Inspectors by providing a single definition for a batch of prepackages that is used to assess compliance in accordance with the AQS test procedures.

Item 20 – Regulation 4.2 (definition of *liquid chemicals*)

Item 20 repeals the definition of *liquid chemicals* from regulation 4.2. This definition is redundant as it is not used in Part 4 of the Principal Regulations. Item 54 incorporates the substance of the definition of *liquid chemicals* into Schedule 5.

Item 21 – Regulation 4.2

Item 9 repeals the definition *measurement marking* as part of repealing regulation 4.1 in its entirety. Item 21 inserts an identical definition into regulation 4.2 which becomes regulation 4.1, as provided by item 10.

Item 22 – Regulation 4.2 (definition of *paint*)

Items 22 and 47 and 48 are related. Item 22 repeals the definition of *paint* from regulation 4.2 in its entirety. This definition is redundant as it is not used in Part 4 of the Principal Regulations. Items 47 and 48 incorporate the substance of the definition of *paint* into Schedule 4.

Item 23 – Regulation 4.2

Items 9, 23 and 37 are related. Items 9 and 37 repeal the definition of *permissible actual deficiency* from regulation 4.1 and 4.30 respectively. Item 23 inserts a definition of “permissible actual deficiency” into regulation 4.2 which becomes regulation 4.1, as provided in item 10.

Item 24 – Regulation 4.2 (definition of *prepackage*)

The Principal Regulations outline the requirements that businesses need to comply with in relation to prepackages, while the Act outlines the various offences and associated penalties that apply when these requirements are not complied with. Even though these provisions are concerned with prepackages, the Principal Regulations and the Act do not use consistent terms when referring to prepackages.

The Principal Regulations specify requirements, such as the labelling and measurement of prepackages, with reference to the term “prepackages”. This term is defined in regulation 4.2 which becomes regulation 4.1 as provided by item 10. However, the Act specifies various offences and associated penalties that relate to prepackages by reference to the term “packed in advance ready for sale”. This term is defined in section 18HA of the Act.

Item 24 repeals the definition of *prepackage* in regulation 4.2 and substitutes it with a new definition of “prepackage”, to ensure it is consistent and aligns with the definition of *packed in advance ready for sale* in the Act.

Item 25 – Regulation (paragraph (c) of the definition of *prepackaged product*)

Item 25 repeals paragraph (c) of the definition of *prepackaged product* and substitutes it for a paragraph that clarifies that prepackaged products are products where the quantity is predetermined prior to the point of sale.

The term “prepackaged product” is defined in regulation 4.2. The policy intention for the defined term “prepackaged product” is that it should be narrower in scope than the defined term “prepackage”. While the term “prepackage” is intended to capture any product or item that is fully or partially wrapped, the term “prepackaged product” is intended to only cover products that are measured and marked with a random or constant nominal quantity and which need to comply with the labelling and measurement requirements in the Principal Regulations (for example, prepackaged products with a random nominal quantity would include prepacked meat or seafood, packed to varying quantities that is available at large retail stores); and which will not be measured at the point of sale or purchase.

Item 25 clarifies this intention by specifying that a prepackaged product is a product for which the quantity that is declared on the label by the packer, rather than the value, has been determined before being offered to sale.

Item 26 – Regulation 4.2

Item 9 repeals the definition *principal display panel* as part of repealing regulation 4.1 in its entirety. Item 26 inserts an identical definition into regulation 4.2, which becomes regulation 4.1 as provided in item 10.

Item 27 – Regulation 4.2

Items 27, 46, 49 and 57 are related. Item 27 repeals the definitions of *random sampling*, *resins*, *therapeutic goods* and *tobacco* in regulation 4.2. These definitions are redundant as they are not used in Part 4 of the Principal Regulations.

Items 46 and 57 incorporate the substance of the definition for *therapeutic goods* and *resins* into Schedule 5, respectively.

Item 49 incorporates the substance of the definition for *therapeutic goods* and *tobacco* into Schedule 4.

Item 28 – Regulation 4.2 (definition of *tolerable deficiency*)

Item 28 and 37 are related. The term *tolerable deficiency* is defined differently in regulation 4.2 and regulation 4.33. Item 28 repeals the definition of “tolerable deficiency” from regulation 4.2 and replaces it with a new definition that incorporates the abbreviation “*T*” and references the tolerable deficiencies specified in the table in subregulation 4.36. Item 37 repeals the definition of “tolerable deficiency” from regulation 4.33 in its entirety.

Item 29 – Regulation 4.2

Item 9 repeals the definition *weighted average quantity* as part of repealing regulation 4.1 in its entirety. Item 29 inserts a new definition for “weighted average quantity” which refers to regulation 4.37 in which the formula for the weighted average quantity of a package is set out.

Item 30 – Regulation 4.6

Item 30 amends regulation 4.6 by substituting the words “other than” with the word “containing”. This amendment better aligns regulation 4.6 with regulations 4.7 and 4.9 and clarifies that regulation 4.6 provides an exemption for certain prepackaged products.

Item 31 – Subregulation 4.7(1) (note)

Item 31 repeals the note in subregulation 4.7(1) and substitutes it with a new note. The new note provides direction to regulation 4.6 for exemptions to the requirement for prepackaged products to be marked with the name and address of the person who packed the product (or on whose behalf it was packed).

Item 32 – Subregulation 4.9(1) (note)

Item 32 repeals the note in subregulation 4.9(1) and substitutes it with a new note. The new note provides direction to regulation 4.6 for exemptions to the requirement for prepackaged products to be marked with the statement of the measurement of the product.

Item 33 – Subregulation 4.10(3)

Item 33 substitutes subregulation 4.10(3) with a new subregulation 4.10(3). Australia is a signatory to the Treaty ratified in 2011. The Treaty specifies that the measurement marking for standard-size wine bottles is to be in a single field of vision. As such the measurement marking for standard-size wine bottles does not need to be on the principal display panel, as previously required under the Principal Regulations.

The new subregulation 4.10(3) allows standard-size wine bottles, where the net contents are 50 mL, 100 mL, 187 mL, 200 mL, 250 mL, 375 mL, 500 mL, 750 mL, 1 L, 1.5 L, 2 L, 3 L or larger quantities of whole litres, to have a measurement marking that is not on the principal display panel.

Item 34 – Regulation 4.13

Item 34 repeals regulation 4.13. Regulation 4.13 prescribes the units of measurement for the offences imposed by section 18HD of the Act.

Item 34 substitutes regulation 4.13 and specifies the types and units of measurement to be used and clarifies the rules according to which prepackages are to be sold. For example:

- under revised regulation 4.13(1) the measurement marking of a product described in Schedule 5 of the Principal Regulations is to be expressed by reference to the kind of measurement specified in that schedule. For example, Schedule 5 identifies that ice cream is to be sold by reference to volume.
- under revised regulation 4.13(2) the measurement marking of a product that is liquid and is not described in Schedule 5, must be expressed by reference to volume.
- under revised regulation 4.13(3) the measurement marking of a product that is solid (including in the form of powder or flakes), semi-solid or partly solid and partly liquid, and is not described in Schedule 5, must be expressed by reference to mass.

Item 34 also enables products which are solid, semi-solid or partly solid and partly liquid to be sold by reference to number, linear measurement and area measurement if the Secretary is satisfied that a significant proportion of merchants in Australia sell it by reference to that method. The Secretary is required to publish and maintain a list of such products. This operates as an exception to the general requirement that these products are to be sold by reference to mass.

Item 35 – Subregulation 4.23(1)

Item 35 substitutes the word “prepackages” for “products” in subregulation 4.23(1) to correct and clarify that this subregulation is concerned with products rather than prepackages.

Item 36 – Subregulation 4.28(1)(a)

Subparagraph 4.28(1)(a) contains a typographic error as it refers to “and.” rather than “and”. Item 36 corrects this typographic error.

Item 37 – Regulations 4.30 and 4.33

Item 37 repeals current regulations 4.30 and 4.33 in their entirety.

Item 38 – Subregulation 5.2(1)

Item 38 deletes the number “(3)” and replace it with “(4)” in sub regulation 5.2(1) to correct an inconsistency in referencing.

Item 39 – Paragraphs 5.2(1)(d) and 6(d)

Item 39 deletes the word “superficial” and replace it with the word “area” in paragraphs 5.2(1)(d) and 6(d). This ensures consistency and clarifies that “superficial” has the same meaning as “area” for the purposes of the Principal Regulations.

Item 40 – Subregulation 5.4(5)(subparagraph (b)(ii) of the definition of *retail sale*)

Subparagraph 5.4(5)(subparagraph (b)(ii) of the definition of retail sale) contains a typographic error as it refers to “fuel.” instead of “fuel;”. Item 40 corrects this typographic error.

Item 41 – Regulation 5.6

Item 41 amends regulation 5.6 by substituting all the words before paragraph (a) with a reference to section 4A of the Act. This amendment identifies the more appropriate reference in the Act.

Item 42 – Paragraph 5.6(d)

Item 42 amends paragraph 5.6(d). Paragraph 5.6(d) previously provided that all water meters are exempt from Part IV of the Act, except those which are cold water meters with a maximum continuous flowrate of less than or equal to 4000 L/h and that were installed on or after 1 July 2004.

Item 42 retains the requirements of Part IV of the Act for cold water meters with a maximum continuous flowrate of not more than 4000 litres installed between 1 July 2004 and 30 June 2014.

Item 43 – After paragraph 5.6(d)

Item 43 inserts a new paragraph (e) into regulation 5.6.

Item 43 reduces the exemption from Part IV of the Act for cold water meters installed in the future. Previously if a cold water meter had a maximum continuous flow rate of more than 4000 L/h, it would be exempt from Part IV of the Act if installed on or after 1 July 2004. Cold water meters installed from 1 July 2014 onwards will only be exempt from 1 July 2014 if they have a maximum continuous flowrate of more than 16 000 L/h. .

Item 44 – Regulation 6.1

Item 44 repeals and substitutes regulation 6.1. For the purpose of section 18MA(2) of the Act, regulation 6.1 prescribes the qualifications, knowledge or experience a person must have in order to be appointed as a Trade Measurement Inspector.

Item 44 specifies that the requirements to be appointed as a Trade Measurement Inspector consist of either a Certificate IV in Government (Investigation) and Certificate IV in Government (Trade Measurement), or a Certificate IV in Government (Investigation) and a Diploma of Government (Trade Measurement). The Secretary is also permitted to recognise other qualifications that

demonstrate a person has the appropriate knowledge or experience to be appointed as a Trade Measurement Inspector.

Item 45 - Clause 2.6 of Schedule 4

Items 45 and 16 are related. Item 45 repeals and substitutes clause 2.6 of Schedule 4 with a new clause 2.6. This clause provides that ice cream packed in a quantity less than 200 mL is exempt from marking. The definition of **ice cream** is currently set out in regulation 4.2, however, this definition is not used in Part 4 of the Principal Regulations. Item 16 deletes the definition from the current regulation 4.2 in its entirety. Item 45 incorporates the substance of the definition of **ice cream** into clause 2.6 of Schedule 4 as this term is used in Schedule 4.

Item 46 – Clause 3.1 of Schedule 4

Items 46 and 27 are related. Item 27 repeals the definition of **therapeutic goods** from regulation 4.2 as this definition is not used in Part 4 of the Principal Regulations. Item 46 specifies that the reference to therapeutic goods in clause 3.1 of Schedule 4 has the same meaning as the one provided in the *Therapeutic Goods Act 1989*.

Item 47 – Clause 4.2 of Schedule 4

Clause 4.2 in Schedule 4 of the Principal Regulations provides that tinters or colouring agents for use in paint that are packed in a quantity less than 100 g or 100 mL are exempt from marking requirements. Meanwhile, the definition for **paint** is contained in clause 4.2 even though this definition is not used in Part 4 of the Principal Regulations. To correct this, item 22 repeals the definition of **paint** from Part 4 of the Principal Regulations. Item 47 incorporates the substance of the definition of **paint** into clause 4.2 of Schedule 4 of the Principal Regulations by clarifying that paint does “include enamel, but not a two-pack paint, artists’ paint or powder coatings”.

Item 48 – Clause 4.3 of Schedule 4

Items 48 and 22 are related. Clause 4.3 in Schedule 4 of the Principal Regulations provides that specific colouring materials on which there is a specific type or volume of paint marked are exempt from marking. Meanwhile, the definition for **paint** is contained in regulation 4.2 even though this definition is not used in Part 4 of the Principal Regulations.

To correct this, item 22 repeals the definition of **paint** from Part 4 of the Regulations. Item 48 incorporates the definition of **paint** into clause 4.3 of Schedule 4 of the Principal Regulations by clarifying that where the marking on the package is a volume of paint, paint does “include enamel, but not two-pack paint, artists’ paint or powder coatings”.

Item 49 Paragraph 5.3(b) of Schedule 4

Item 49 repeals and substitutes paragraph 5.3(b) of Schedule 4. Paragraph 5.3(b) of Schedule 4 lists specific articles packed in a quantity less than 15 grams or 15 millilitres that are exempt from marking requirements. Item 49 incorporates the substance of the definition of **tobacco** into Schedule 4, which is removed from regulation 4.2 by item 27.

It also aligns the reference to “therapeutic goods” with the *Therapeutic Goods Act 1989*, consistent with item 46.

Item 50 – Clause 5.8 of Schedule 4

Item 50 repeals clause 5.8 of Schedule 4 and substitutes it with a more detailed description of “garden landscape materials”.

Item 51 – Schedule 5 (heading)

Item 51 repeals the title of Schedule 5 of the Principal Regulations and inserts the following title: “Schedule 5 – Expression of measurement marking Note: See subregulation 4.13(1)”.

Item 52 Schedule 5 (at the end of the cell at table item 3, column headed “Description of article”)
Schedule 5 sets out in a table the measurement markings that are permissible for particular articles listed in that schedule.

Item 14 deletes the definition of *compressed or liquid gasses* from regulation 4.2. Item 52 inserts at the end of the cell at table item 3 under the column headed “Description of article” the substance of the definition for *compressed or liquefied gases* and clarifies that compressed or liquefied gas does not include liquefied petroleum gas.

Item 53 – Schedule 5 (at the end of the cell at table item 4, column headed “Description of article”)
Schedule 5 sets out in a table the measurement markings that are permissible for particular articles listed in that schedule.

Item 14 deletes the definition of *cream* from regulation 4.2. Item 53 inserts at the end of the cell at table item 4 under the column headed “Description of article” the substance of the definition for *cream* and clarifies that cream does not include “clotted cream, sour (or cultured) cream or substitutes for clotted or sour cream”.

Item 54- Schedule 5 (table item 9)

The current Schedule 5 sets out in a table the measurement markings that are permissible for particular articles as listed.

Item 16 deletes the definition of *ice cream* from regulation 4.2. Item 54 incorporates the substance of the definition of *ice cream* into item 9 of the table in Schedule 5 and clarifies that ice cream includes frozen confection containing ice cream, flavoured ice, fruit ice, water ice or a substitute for ice cream.

Item 55 – Schedule 5 (at the end of the cell at table item 12, column headed “Description of article”)
Schedule 5 sets out in a table the measurement markings that are permissible for particular articles listed in that schedule. Item 20 repeals the definition of *liquid chemicals* from regulation 4.2 as this definition is not used in Part 4 of the Regulations.

Item 55 incorporates the substance of the definition of *liquid chemicals* into Schedule 5 by specifying that liquid chemicals include solvents packed for sale for pharmaceutical, laboratory or industrial use.

Item 56 – Schedule 5 (cell at table item 13, column headed “Description of article”)

Schedule 5 sets out in a table the measurement markings that are permissible for particular articles listed in that Schedule. Item 22 repeals the definition for *paint* from regulation 4.2 as this definition is not used in Part 4 of the Regulations.

Item 55 repeals the words “(other than paste paint)” from item 13 of the table in Schedule 5. It then incorporates the substance of the definition of *paint* into Schedule 5 and clarifies that paint does include “enamel, but not a two-pack paint, artists’ paint or powder coatings”.

Item 57 - Schedule 5 (table item 18)

Item 27 repeals the definition for *resin* from regulation 4.2 as this definition is not used in Part 4 of the Regulations.

Item 57 repeals item 18 of the table and incorporates the substance of the definition of *resin* into regulation 4.2 in Schedule 5. Item 57 clarifies that resins include natural and synthetic resins, and polymeric materials other than paint described in items 13 and 14 of the table in Schedule 5.

Item 58 – Schedule 6 (heading)

Item 58 repeals the heading of Schedule 6 and inserts the following heading: “Schedule 6 – Permissible units of measurement” Note: see subregulation 4.13(6)”. This renames the current Schedule 6 and corrects the note associated with the title to reflect the changes that are made to regulation 4.13 by item 34.

Item 59 – Paragraph 3.1(b) of Schedule 6

Item 59 repeals and substitutes paragraph 3.1(b) of Schedule 6 to revise when it is permissible to measure and mark items in centimetres. Previously linear measurement may be measured in centimetres where the length of the product did not exceed 100 centimetres.

Item 59 replaces paragraph 3.1(b) and permits the use of the measurement unit “centimetre” not only where the length does not exceed 100 cm but also generally for the marking of bed sheets, tarpaulins or other products to which regulation 4.20 applies.

Item 60 – Clause 4 of Schedule 6

Item 60 repeals clause 4 of Schedule 6 and inserts “area measurement” as a permissible unit of measurement into the Principal Regulations. This reflects industry practice, which is to refer to “superficial measurement” as “area measurement”.

Schedule 2 – Amendments commencing 1 January 2015

National Trade Measurement Regulation 2009

Item 1 – Regulation 1.4

Item 1 inserts a definition for the term **registered training organisation** into the Principal Regulations which has the same meaning as the one provided in the *National Vocational Education and Training Regulator Act 2011*. The insertion of this definition clarifies the reference to a registered training organisation which is inserted into the Principal Regulations by items 2 and 3.

Item 2 – After subregulation 2.43(9)

Item 2 inserts a new prescribed condition which applies to servicing licences issued under Part X of the Act. This condition requires all servicing licensees, or an employee of a servicing licensee, to have a valid statement of attainment issued by a registered training organisation for a class of measuring instrument in order to be able to legally verify that measuring instrument. Businesses and consumers rely on servicing licensees for the maintenance of the metrological infrastructure for trade measurement in Australia. Having an effective framework in place to ensure that servicing licensees are able to correctly verify measuring instruments gives businesses and consumers confidence that verifications are being performed to an appropriate standard by skilled servicing licensees.

NMI administers the servicing licensee requirements of the Act. To help ensure all verifiers under all their service licences meet a minimum standard of skill, the Secretary has imposed licence conditions on existing servicing licensees under section 18NG of the Act. These licence conditions require licence holders to have a statement of attainment that covers each servicing licence subclass they verify under their licence. Holding a valid statement of attainment demonstrates that a verifier has the minimum expected skills required to verify instruments in the relevant classes.

Item 2 reflects this current administrative system in the Principal Regulations and prescribes a new condition for all servicing licences.

Item 3 – After paragraph 3.62(f)

Item 3 inserts a new condition that applies to public weighbridge licence for the purposes of section 18PH of the Act. Subsections 18PQ(2), 18PR(2) and 18PS(2) of the Act provide that the Secretary must not exercise his or her discretion to prevent the employment of certain persons, or the entering of contractual relations with certain persons, or prevent the operation of a public weighbridge by certain contractors, unless the Secretary is satisfied that it is necessary to do so because of the person's lack of competency.

The Australian Government has developed an internal administrative system which NMI uses to assess and determine the competency of weighbridge licensees. This system requires weighbridge operators, when seeking appointment, to obtain a valid statement of attainment for the skill set associated with that particular servicing licence class.

Item 3 reflects this current administrative system in the Principal Regulations and prescribes a new condition for all weighbridge licensees. Item 3 imposes a new public weighbridge licence condition requiring that that at least one individual employed or contracted by a public weighbridge licensee or the licensee itself must have a valid statement of attainment issued by a registered training organisation for the skill set or unit of competency associated with operating the public weighbridge. The operating of a public weighbridge includes the maintenance of the public weighbridge to ensure its continued operation in an accurate manner.

Consultation

The National Measurement Institute (NMI) has undertaken stakeholder consultation in considering the amendments made to the Principal Regulations by the Amending Regulation as outlined below. However, direct consultation has not been undertaken on the whole package of amendments.

Consultations on removing the exemption for cold water meters for those with a maximum continuous flowrate of equal or less than 16000 L/h commenced in 2009. There have been two formal public consultations that have sought industry comment from water service providers, industry associations, meter manufacturers and suppliers. These consultations published on the NMI website ran for a period of two to three months. In addition, there have been a number of informal consultations (including individual consultations) with various stakeholders. A majority of stakeholders have supported removing the exemption for these cold water meters. At the beginning of 2014, NMI confirmed the proposal in relation to removing the exemption for cold water meters by 1 July 2014 to all impacted stakeholders.

Public consultation on competency requirements for servicing licensees and public weighbridge licensees was undertaken as part of the Council of Australian Governments (COAG) process, during the transition from a state and territory based trade measurement system to a national trade measurement system administered by NMI. The consultation, published on the NMI website, included a formal consultation on the establishment of a nationally recognised framework for individuals who verify instruments and operate public weighbridges. This consultation ran for approximately six to eight weeks, commencing in September 2008. In addition, early 2010, existing licensees (under the State and Territory systems) were advised, via forums in each capital city, that the requirement for licensee and verifier competence would be retained in the new national system. Industry was supportive of this measure as it formally recognised the trade qualifications (verifier's skills). Key industry leaders were also part of the development of the skill sets for the establishment of the competencies.

There has also been informal consultation with industry on the remaining amendments, including NMI forums such as the Consumer and Industry Liaison Committee (CILC), which is held biannually. For instance retail industry associations have advocated for flexibility in the use of centimetre for prepackaged products and other hemmed fabric material and wish to implement the proposed amendments as soon as possible to allow flexibility for retailers.

There has been broad support for the proposed amendments from stakeholders, particularly businesses and industry as the proposals will rectify unintended operational consequences of the legislation, which has made compliance unnecessarily difficult for stakeholders. NMI has advised stakeholders of the progress made in relation to the proposed amendments.

In drafting regulation 2.47A of the Regulations, which allows for the automatic indexation of the prescribed fee charged by Trade Measurement Inspectors for verifying a measuring instrument, Treasury and the Australian Taxation Office were consulted on the application of the Goods and Services Tax. The Australian Bureau of Statistics has also been consulted on the automatic indexation.

On 3 June 2014 the Department of Foreign Affairs and Trade were informed of the amendment to regulation 4.10 of the Regulations. This amendment would ensure that the Regulations are consistent with the *World Wine Trade Group Agreement on Requirements for Wine Labelling*, which Australia ratified in 2011.

NMI has also consulted with the Office of Best Practice Regulation (OBPR) and they have advised that a Regulation Impact Statement was not required. This advice was reconfirmed by OBPR on 2 May 2014.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Trade Measurement Amendment (2014 Measures No.1) Regulation 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of the *National Trade Measurement Amendment (2014 Measures No.1) Regulation 2014* (Amending Regulation) is to amend the *National Trade Measurement Regulations 2009* (Principal Regulations). The Principal Regulations provide details that allow effective compliance with and administration of the *National Measurement Act 1960* (Act).

The Act sets out the legislative framework for a national system of units and standards of measurement of physical quantities. This system provides a legal framework for the uniform use of units and standards of measurement and co-ordinates the operation of the national system of trade measurement. The Principal Regulations support the national trade measurement system.

Human rights implications

There are no human rights implications of the Amending Regulation. The administration of national trade measurement does not engage any of the applicable human rights and freedoms. The amendment of the Principal Regulations will not affect any of the applicable human rights and freedoms.

Conclusion

The Amending Regulation is compatible with human rights as it does not raise any human rights issues.

The Minister for Industry, the Honourable Ian Macfarlane MP