



Subject	Measurement Law Review Submission by Australian Hotels Association
Department	Measurement Law Review Legal Metrology National Measurement Institute Department of Industry, Innovation and Science
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Background

The Australian Government has announced a 'once-in-a-generation' comprehensive review of Australia's measurement laws. The Commonwealth Department of Industry, Innovation and Science is reviewing the legislative framework underpinning Australia's measurement system with the aim of modernising, streamlining and simplifying Australia's measurement legislation.

Australia's measurement legislative framework must be fit for purpose for current and future opportunities or challenges. It should facilitate innovation and competition, reduce any business uncertainty and transaction costs, and position the regulator to undertake appropriate risk-based enforcement activity. Submissions close 30 June 2018 with options for reform expected to be presented to the Australian Government in 2020.

Scope of the review

The review is to develop options and make recommendations in relation to:

- minimum effective regulation models that could lessen government intervention;
- using principles-based legislation to minimise regulatory burden on business;
- pathways to support a transparent, proportionate, flexible and risk-based approach to regulation;
- utilising appropriate third parties to support or implement the framework;
- removing unwarranted regulatory barriers to market entry of new technologies, and other technical barriers to competition;
- mechanisms to support market innovation and changes in technology;
- ensuring that Australia's measurement legislation promotes confidence in Australia's measurement system; and
- adopting best practice national and international regulatory approaches.

Objectives of the review

The following four objectives will be used to reshape Australia's measurement framework:

1. **Developing and advancing measurement activities that support Australia and its economy.**
Australia's measurement activities and functions should benefit the Australian economy and all Australians. The review will aim to ensure Australia's measurement activities are focused on delivering measurement capabilities that match Australia's current and future needs and opportunities, consistent with international best practice.
2. **Strengthening strategic measurement capabilities.**
Ensuring that Australia's scientific measurement capabilities support the strategic objectives of the Government is a central aim of the review. Supporting the development and advancement of new measurement techniques to further scientific research and standard development across the economy.
3. **Supporting confidence in measurement – domestically and internationally.**
An infrastructure that builds trust between buyers and sellers through confidence in measurements and facilitates trust in measurements that are fair and reliable, with minimal regulatory burden. A more modern simplified framework that achieves reliable measurements allowing consumers to feel confident and empowered when making purchasing decisions and does not encourage additional and unnecessary barriers to trade. Trusted measurement practices enable Australia to remain competitive in growing international markets.
4. **Promoting innovation through a modern approach to measurement infrastructure.**
Measurement plays a fundamental part in the innovation process – assisting in the design and incorporation of next-generation processes to gain a competitive advantage through the faster development of new technologies, improved productivity through standardisation and to lead the direction in new technologies. A move towards a more modern principle-based measurement legislation will simplify and clarify regulatory requirements providing flexibility in the framework that enables innovation but still protects the integrity of the measurement system.

At this early stage, the Commonwealth is focused on:

- ideas, rather than proposing solutions;
- ruling nothing in or out;
- considering the economic value of measurement to Australia; and
- examining different models to deliver Australian measurement needs.

Overarching Key Questions the review is looking to answer

1. What economic and scientific changes are on the horizon which measurement needs to be prepared for?
2. What should be the Commonwealth's role in measurement?
3. What is working well in Australia's measurement framework?
4. What would you change about Australia's measurement framework?

Targeted Issues

The Reviewers have contacted the AHA at a national level and indicated they would like to garner our views specifically on:

- the scope of the current legislation
- traceability
- pattern approval and verification of measuring instruments
- current requirement for transactions based on measurement
- the use of third-parties to ensure confidence in the measurement system
- compliance arrangements

Draft Cost Recovery Implementation Statement 2018-19

In addition to the measurement law review, the Commonwealth has also just closed submissions on the Draft Cost Recovery Implementation Statement for the National Measurement Institute. In that implementation statement it outlines the broad objective of the Commonwealth to increase user charges for the NMI's services.

NMI's business largely consists of Pattern Approval, Licensing of third party private organisations that verify measuring instruments, and appointing authorities to certify, verify, approve and read measurements across a range of industries. Proposals to increase user charges range between 50% and 400% for difference NMI functions with transitional arrangements included in the consultation.

As such any reform of the measurements laws and their supporting system in Australia must be viewed in the context of the Commonwealth's intent to push more charges through to industry for the measurement integrity functions – regardless of where they reside in any new system design. AHA members as end users / customers will not directly be significantly impacted by these reforms at this stage but could face the potential of increased costs to suppliers being passed on through the supply chain.

AHA Response

General comments

The AHA welcomes the opportunity to participate in this important review process. Nationally we have over 5000 members spread across a gambit of hospitality industries including, hotels, bars, clubs, restaurants, cafes, accommodation venues and nightclubs.

We employ over 270,000 workers, generate over \$12 billion of economic benefit and support in excess of 50,000 community groups. We also provide important social vibrancy to our nation's cities, suburbs, towns and communities. The AHA strongly supports the Responsible Service of Alcohol within our venues and to that end, the correct and accurate measurement of alcohol dispensation is critical.

Trade measurement laws require the retail sale of beer, stout, ale, brandy, gin, rum, vodka, and whisky (including whiskey) to be sold by a reference to volume. Through correct measurement practices both the venue and the consumer can have confidence in the number of standard drinks being consumed and responsible service can be facilitated.

AHA submission

The industry strongly supports the objects of the National Measurement Act 1960 specifically the establishment of a national system of units and standards of measurement of physical quantities; and for the uniform use of those uniform units and standards of measurement throughout Australia.

Given the broad nature of the review currently underway, its scope, stated objectives and overarching Key Questions, we remain agnostic at this stage as to how radical a reform the Commonwealth could envisage to the national system of measurements, its legislative framework and operability.

Thus, we reserve our right to contribute at a later stage should the government be proposing to deregulate the national measurements system, move towards outsourcing or transference of functions that at the moment reside with the Commonwealth to industry, industry bodies, states and territories or a new third party licensed entity, or generally propose a major overhaul of the current system until such time as greater details of any of those proposals are before us. As such, and drawing upon the guidance provided from the Review Team we will focus our contribution at this time on the following topics:

- The scope of the current legislation
- Traceability
- Pattern approval and verification of measuring instruments
- Current requirement for transactions based on measurement
- The use of third-parties to ensure confidence in the measurement system
- Compliance arrangements

The scope of the current legislation and regulations

Under trade measurement law, beer, stout and ale must be sold at a price determined by reference to volume. The measurement of that volume must be in millilitres (mL) or litres (L) (or derivatives of) and correct. When beer is sold on tap at a licensed premise, this usually involves serving the beer in an approved batch-tested glass or jug with the volume marked in millilitres (mL) or litres (L).

A batch-tested glass or jug can be manufactured from glass, acrylic or other approved materials. All batch-tested products have been checked by a servicing licensee, verified against the National Measurement Institute's (NMI) national test procedures and permanently marked or moulded with the manufacturer's identification, the capacity and the batch testing mark. Other requirements include:

- the glass or jug must be of a design or 'pattern' approved by NMI under approval category 4/1/OD
- the capacity of a beer glass can be defined by either the brim or a capacity (Plimsoll) line
- the capacity of a beer jug must be defined by a capacity (Plimsoll) line
- beverage measures must be marked with the capacity in millilitres (mL)
- beverage measures must be made of a rigid or semi-rigid material.

Beer sold in vessels or containers not marked with a measurement statement, which are not batch-tested or verified, still need to be sold by reference to volume and that volume must be accurate. There are no prescribed sizes for beverage measures for the sale of beer, ale and stout. Terms such as seven, middy, pot or schooner do not legally specify a particular size.

The sale of brandy (including cognac and armagnac), gin, rum, vodka or whisky (whiskey) is usually made using an NMI-approved spirit measure. Approved spirit measures include simple measures commonly referred to as thimble measures, egg cups, jiggers, or more complex dispensers that require verification by servicing licensees. Simple measures can either be purchased as a batch-tested item or may be individually verified for accuracy by a servicing licensee. Requirements for simple spirit measures include that they must be:

- in capacities of 15 mL, 30 mL or 60 mL
- in the prescribed units of millilitres (mL)
- marked with either batch-testing markings or a verification mark
- made of a rigid or semi-rigid material.

Spirit dispensers must:

- be of a pattern approved by NMI under approval categories 4/5/ or 5/6S/ and bear a verification mark applied by a servicing licensee
- deliver fixed quantities of 15 mL, 30 mL or 60 mL.

All spirit dispensers must conform with the legislation and have a current certificate of approval. Dispensers currently in use must bear a verification mark. Measurement requirements continue to apply when brandy (including cognac and armagnac), gin, rum, vodka, whisky (or whiskey) are served with or without a mixer such as soft drink (e.g. vodka and orange, rum and cola), milk or water.

Non-approved bottle-top or wall-mounted pourers may be used to dispense products other than the specified spirits, providing a measurement statement is not made or implied. However, it is an offence to keep or use non-approved bottle-top or wall-mounted pourers marked with a quantity statement on premises where alcohol is sold.

Wine (unless it is pre-packaged) does not have to be sold by a volume measure. Therefore, wine may be sold in an unmarked glass or carafe. If wine is to be sold by the glass and a measurement is advertised, then the vessels will be captured under the national measurements system and subject to verification. Pre-packaged wine, whether in a bottle or cask, must adhere to all standard packaging requirements. However, the trade measurement regulations do not apply to the position of a measurement marking for standard-sized wine containers.

AHA submission

It is the view of the AHA that the scope of the current legislation as it pertains to our membership and their industry sectors is sufficiently broad at this time.

The national measurements framework as it relates to our members is generally well understood and long established. Anecdotally we believe there is also a high level of compliance with measurement requirements and is necessarily linked to our Responsible Service of Alcohol practices and procedures.

Whilst there is always a need to continually educate and train our workforce, especially given its transiency, we don't see the current system as imposing a high operational burden and our membership is generally comfortable with it.

AHA submission

The AHA does not support the inclusion of volumetric labels on wine glasses into the national measurements system requirements. Nor do we support the inclusion of Cider at this time.

As per 5.1 of the National Trade Measurement Regulations 2009 we note that proscribed spirits are brandy, gin, rum, vodka and whisky. The AHA is comfortable with the arrangements and are not supportive of expanding the regulations to include:

- spirits when they are mixed with other spirits or with other alcoholic liquors to produce cocktails
- to any liqueurs
- to any brandy not made from grapes such as cherry brandy or plum brandy which are liqueurs.

Traceability

Traceability is the hierarchy of standards by which a physical measurement can be related back through the national metrological pyramid to the relevant International System of Units' SI Unit. SI units were adopted by international agreement at the General Conference of Weights and Measures in 1960 and they form the basis of Australia's hierarchy of standards.

The National Measurement Act requires NMI or its agents to maintain such standards of measurement that are necessary to provide means for measurements of physical quantities to be made in terms of the legal units.

AHA submission

The AHA is agnostic about the current traceability requirements pending further information about any changes that may impact our members.

Pattern approval and verification of measuring instruments

The AHA notes the current situation whereby there are no verification periods for alcohol dispensers. It is the responsibility of a person who sells alcohol to determine how regularly their alcohol dispensers should be verified.

AHA submission

Our membership is happy with the current arrangements and do not support moving towards a system of codified or regulated time periods after which instruments would need another verification process to be undertaken. Any move in this space would add direct costs onto our businesses when we are unaware of any substantiated complaints with the current arrangements.

Current requirement for transactions based on measurement

When beer is sold on tap at licensed premises, this usually involves serving the beer in an approved batch-tested glass or jug with the volume marked in millilitres (mL) or litres (L). In recent years there has been an increasing trend for some beers, particularly 'boutique' or 'craft' beers, to be sold in non-standard vessels that are not approved as a measuring instrument.

This includes beer sold for consumption on the premises in 'mason jars' and beer sold in takeaway containers, such as 'growlers' and 'squealers'. If non-approved batch-tested glasses and jugs are used when selling beer on tap, a venue must make sure that a written statement of the volume is provided at the time of purchase. Examples of written statements include:

- a printed or written menu clearly visible at the point of sale when beer is consumed at a licensed premise

- a receipt or swing tag on the bottle for takeaway containers.

There is no requirement to advertise a unit price. If a unit price is advertised, however, it must be expressed as a price per litre.

AHA submission

The AHA is comfortable with the current arrangements. With the increase in craft breweries and distilleries we are supportive of the current requirements and think they strike the right balance between ensuring consumers are informed and allowing creative and contemporary offerings. For example, it is very much part of the craft brewery scene in the inner west of Sydney for growlers from any supplier to be re-filled by the business the patron is enjoying.

The use of third-parties to ensure confidence in the measurement system

The AHA has no comments on this pending further guidance from the Commonwealth about any potential changes and how they may affect our businesses.

Compliance arrangements

NMI employs Trade Measurement Inspectors who can visit a place of business 'at any reasonable time of day' to inspect and/or test equipment and review trading practices to ensure that they comply with the law. The national trade measurement laws outline a number of offences relating to the sale of alcohol, including:

- using a non-approved measuring instrument
- using a measuring instrument that is not correctly verified
- using an incorrect measuring instrument to dispense beer or spirits
- using a measuring instrument in an unjust manner
- selling, leasing, hiring or lending a measuring instrument that does not give accurate measure or is not of an approved pattern to be used in selling prescribed alcohols
- advertising, offering or exposing beverages for sale at a price determined by a measurement that is not in prescribed units.

Breaches of the trade measurement laws could lead to an infringement notice or prosecution.

AHA submission

The AHA supports a compliance framework that seeks to increase awareness and education within the hospitality sector to the requirements. To that end we support an inspection regime that is respectful, informative and provides our members with an opportunity to improve their practices should any unintentional breaches occur without taking a heavy-handed approach.

Conclusion

The AHA welcomes the opportunity to provide input into the Commonwealth's review. As the review progresses and a clearer picture of proposed reforms start to become known we would be happy to provide further submissions as they pertain to our membership.



**STEPHEN FERGUSON
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