

23 September 2016

Dr Peter Fisk

Chief Executive and Chief Metrologist
National Measurement Institute (NMI)
36 Bradfield Road,
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GEA RESPONSE TO NMI LEGAL POLICY REVIEW DISCUSSION PAPER

Dear Dr Fisk

I am writing to you on behalf of the members and associates of Gas Energy Australia in response to the NMI Legal Policy Review Discussion Paper dated August 2016. Gas Energy Australia offers the following comments on the questions outlined in the discussion paper.

Questions:

5.1 Are the following policy objectives appropriate for legal metrology in Australia and what is their relative importance?

- Supporting confidence in the measurement system
 - Reduced disputation and transaction costs in trade transactions
 - Sound evidential basis for legal and regulatory measurements
- Facilitating a level playing field for business
- Consumer (or the broader term customer) protection
- Supporting industry development and technology innovation

5.2 Are there any other policy objectives that for legal metrology that would assist in delivering successful outcomes for Australian businesses and consumers?

Comments In terms of importance Gas Energy Australia supports a well-designed Australian metrology system that is aligned internationally and backed by sound regulatory requirements which will consistently deliver correct weights and measures and ultimately underpin consumer and business confidence. Gas Energy Australia also supports a well-designed Australian metrology system that embraces technological innovation, is easy to understand, has been communicated and supported by education and is assured through risk based inspections and appropriate policing as the cornerstone of a robust measurement system.

Gas Energy Australia also agrees with the need for a level playing field and contends that this extends to terms beyond the current simple weights and measures under the purview of NMI. For example, consumers purchasing a new car need to compare different fuel sources from autogas, petrol and diesel through to electricity. For more background, please refer to GEA Correspondence to NMI - GEA Requests NMI approve secondary indication (Energy) at point of sale, dated 17 September 2016. Consumers are comparing technologies and products which provide transport energy, not just which service station has

the cheapest litre of fuel. Gas Energy Australia recommends that the NMI better educate consumers by allowing comparisons such as energy content equivalence at the point of sale and further that the NMI take the lead and publish Australian conversion factors.

A robust system of weights and measures should also not place undue barriers or obstacles in the way of Australian businesses as is the current case with the requirement for density compensation in post-2001 autogas dispensers. For example, refer to GEA Correspondence – Review of Automatic Density Compensation in Autogas Bowsers, dated 5 November 2015. The requirement for automatic density compensation through the use of a density probe is out of step with international practice, with an Australian manufacturer and exporter of autogas dispensers to 22 countries in Europe, Turkey and Asia reporting no requirement to install density probes in these countries.

Consumers rely on a regulatory body to have protection mechanisms in place to detect unfair practices and educate business and where required prosecute offenders. Gas Energy Australia notes that the Australian Competition and Consumer Commission (ACCC) also has a government mandate to promote competition and fair trade in markets to benefit consumers, businesses, and the community. The ACCC regulates national infrastructure services, with a primary responsibility to ensure that individuals and businesses comply with Australian competition, fair trading, and consumer protection laws. The NMI's consumer protection role must be seamless and done in conjunction with the ACCC so that duplication of effort and overlap of responsibility does not lead to increased costs for businesses and consumers.

Gas Energy Australia also advocates that the NMI must continue supporting industry development and technology innovation, and further that this should include Australian firms bringing international technology and systems into Australia. Gas Energy Australia refers to the GEA Submission to NMI: NITP Review Dated 25 June 2015, where Case Study 2: LNG dispenser with US certification outlines an example of the cost of achieving pattern approval contributed to a LNG Company placing an internationally certified dispenser in storage.

Response Gas Energy Australia suggests the following policy objectives are appropriate for legal metrology in Australia and they are important in delivering confidence to the consumer.

A legal metrology system should:

- be aligned to trusted international standards and regulation;
- be backed by sound regulatory requirements;
- place no undue regulatory barriers or obstacles;
- embrace development and technological innovation both locally and internationally;
- not duplicate effort or overlap responsibility with other regulatory agencies;
- deliver correct weights by:
 - a system that is easy to understand;
 - results that are traceable; and
 - requirements that are communicated to consumers and businesses alike; and
- be quality assured through regular consultation, risk based inspections and appropriate policing

Questions:

8.1 What should be the criteria for Australia's participation in the development of international documentary standards relevant to legal metrology?

8.2 What should be NMI's approach to determining Australia's pattern approval requirements where documentary standards from organisations such as the ISO and the IEC more fully account for recent developments in technology and operation of measuring instruments than equivalent OIML standards?

8.3 To what extent should NMI consider flexibility to allow for particular circumstances in Australia when adopting international standards for pattern approval?

Comments – As stated above in relation to the LNG dispenser example, Gas Energy Australia supports participation in international documentary standards relevant to legal metrology. Gas Energy Australia suggests that the NMI could look to learn from the Standards Australia (SA) model whereby the Australian representative is not an employee of SA but an Australian expert nominated by SA to the committee. This reduces the costs and has been proven to work well with SA engagements to major international standards bodies such as the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC).

Gas Energy Australia suggests a pattern approval system similar to that used by the Australian Building Codes. This system sets out a series of performance requirements can be met using either a Performance Solution or using a Deemed-to-Satisfy (DTS) Solution. A Performance Solution is unique for each individual situations, whereas a DTS Solution follows a set recipe of what, when and how to do something (such as NMI pattern approval requirements or recognised international equivalents).

Response Gas Energy Australia fully supports international participation, and recommends trusted International Standards such as ISO and IEC are adopted where appropriate and further supports flexibility in adopting international standards for pattern approval.

Questions:

9.1 What are the key principles that should drive Australia's regulatory approach to legal metrology?

9.2 What concerns, if any, could there be for a business when managing compliance in a principles-based regulatory environment?

9.3 What level of guidance material, if any, should be available to ensure stakeholders have sufficient understanding of the policy objectives and outcomes being sought?

9.4 What should be the legislative status of such guidance material?

Comments. NMI should not add additional regulation that impose costs for no benefit to consumers. With reference to the previously cited example of the requirement for autogas density probes, an Australian only variant adds additional cost and complexity for no consumer benefit.

Response. Gas Energy Australia recommends the key principle of conformity with international requirements supported by traceability and quality be should applied to the regulatory approach used by the NMI.

Questions:

10.1 What are the appropriate factors to inform risk management related to setting priorities for regulation of legal metrology, including compliance and enforcement activity?

Discussion. Gas Energy Australia supports the NMI's trade measurement compliance and enforcement policy which articulates a risk management framework based on the consequence and likelihood of non-compliance. With a global market place and international trade, reputational risk should be added to the framework for completeness.

Response. Gas Energy Australia suggests reputational risk be included in the risk framework.

Questions:

11.1 How important is it that NMI considers the broader context of 'fit-for-purpose' when developing requirements/policies in relation to measurement?

11.2 How should NMI focus its regulatory activity in relation to conformity to type assessment?

Response. NMI's role should be to protect the interests of consumers and this should focus on the delivery of correct measure and provide a structure for re-sellers which reinforces this.

Questions:

11.3 How should NMI focus its compliance activities to ensure businesses are meeting their obligations under trade measurement law?

11.4 Which is more harmful: inaccuracy that benefits the customer/consumer or inaccuracy that benefits the vendor/trader?

11.5 What relative weight should NMI give to: identifying that certain thresholds have been breached; and individual risk assessments, before financial penalties are imposed?

11.6 What are the appropriate circumstances for NMI to consider referral for prosecution as a regulatory response?

Response. Gas Energy Australia supports the application of the risk management framework in relation to compliance response and prosecution. The factors outlined in the discussion paper provide guidance on an appropriate response. These were:

- the extent of financial detriment to consumers or to industry;
- the extent of repeat contravention of the national trade measurement legislation;
- referrals from any consumer protection agencies or regulators;
- particular contraventions of high public interest; and
- special circumstances that give enforcement actions added significance such as deterrence of a non-compliant practice within an industry and protection of particularly vulnerable or disadvantaged groups.

Thank you for the opportunity to provide input into the NMI strategic review. GEA and members look forward to working collaboratively with the NMI in the future.

Yours sincerely

A handwritten signature in black ink, appearing to read "John Griffiths", with a long horizontal flourish extending to the right.

John Griffiths
Chief Executive Officer