



**CONSUMERS
FEDERATION
OF AUSTRALIA**

Developing and promoting
the consumer interest

Submission in relation to Reforming Australia's Measurement Legislation Consultation Regulatory Impact Statement May 2021

By email: measurementlawreview@industry.gov.au

BACKGROUND

Consumers' Federation of Australia (CFA)

The CFA is the peak body for consumer organisations in Australia. CFA represents a diverse range of consumer organisations, including most major national consumer organisations. Our organisational members and their members represent or provide services to millions of Australian consumers.

CFA's member organisations include membership-based organisations, organisations that provide information, advice, counselling or assistance to consumers and organisations that identify regulations or market features that harm consumer interests and propose solutions. A list of CFA's organisational members is available at <http://consumersfederation.org.au/members/cfa-organisational-members/>.

CFA advocates in the interests of Australian consumers. CFA promotes and supports members' campaigns and events, nominates and supports consumer representatives to industry and government processes, develops policy on important consumer issues and facilitates consumer participation in the development of Australian and international standards for goods and services.

CFA is a full member of Consumers International, the international peak body for the world's consumer organisations.

Contact Person: John Furbank, CFA Representative NMI Consumer and Industry Liaison Committee. email: johnfurbank@internode.on.net

CFA appreciates the opportunity to comment on this options paper.

This submission is supported by the Consumers Association of South Australia.

SUMMARY and RECOMMENDATIONS

CFA supports the view expressed in the Reforming Australia's Measurement Legislation Consultation Regulatory Impact Statement April 2021 (RIS) the Australian Government is best placed to make, maintain and enforce relevant measurement laws.

CFA supports the continuation of current regulations designed to ensure that consumers have access to consistent, comparable information including the price per unit of measurement and where and how legal metrology information is provided on package labels.

CFA considers that although the Act could be clarified by rewriting and made simpler to use for both consumers and industry, the current supporting regulations work well.

CFA believes that it is not appropriate for the National Trade Measurement Regulations in relation to Part 4 *Packaging*, to be replaced by principles which allow industry to decide on how they comply with the 'principle'.

CFA does not accept that the current law creates an unnecessary burden for business and supports the continuation of current regulations designed to ensure that consumers have access to consistent, comparable information.

CFA supports the retention of specific requirements for minimum font heights and colour contrast; the price is consistent by reference to a price per kilogram and the quantity information consistent with the international recommendations of OIML R79¹. OIML R79 also recommends that quantity information is shown on the main display panel of prepackaged items.

CFA supports the proposal that requirements to sell meat by weight will be retained and recommends that the definition of meat be redefined to include meat that has been subject to processing and/or reconstituted.

CFA recommends that the legislation for sale of beer, wine, and spirits is reviewed to make it more comprehensive and easier to understand and enforce. The review should also include requiring wine to be sold in specified quantities; extending current spirit provisions to include other spirits and requiring the capacity of beer and wine glasses be stated on the side of the glass, where consumers can readily see the quantity.

CFA supports the current licensing system for public weighbridges.

CFA supports the use of flexible legislative tools to ensure compliance with the legislation including, infringement notices, civil penalties, court orders and corrective notices and recommends that corrective notices carry a penalty for non-compliance with the corrective instruction.

CFA recommends that changes are made to the legislation to enable full transparency of NMI activity in relation complaint handling, enforcement action and prosecutions.

CFA recommends that any changes to the way in which measuring instruments are approved as suitable for trade includes requirements that an instrument, sustains accuracy, prevents fraud in its use and the quantity indication is clear, easy to understand and readily visible to the purchaser.

COMMENT

Rationale for government involvement

CFA supports the view expressed in the RIS that the Australian Government has constitutional responsibility for measurement and is best placed to make, maintain and enforce relevant laws.

¹ International Organisation for Legal Metrology International Recommendation OIML R 79 Labelling requirements for prepackaged products

Provision of information

The provision of adequate information to consumers is enshrined in United Nations guidelines. Australia is a member of the UN. The United Nations Guidelines for Consumer Protection principles state Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines and relevant international agreements. The Guidelines include 'Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs'.

In Australia, the Harper Review² of Competition Policy acknowledged the contribution consumer information added to competition in the marketplace. The Harper Review recommended: 'Governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice' and, '...governments, both in their own dealings with consumers and in any regulation of the information that businesses must provide to consumers, should draw on lessons from behavioural economics to present information and choices in ways that allow consumers to access, assess and act on them.'

One of the biggest issues for consumers is the provision and visibility of information. CFA supports the continuation of current regulations designed to ensure that consumers have access to consistent, comparable information including the price per unit of measurement and where and how legal metrology information is provided on package labels. For example:

- Requiring the provision of a price per kilogram on random measure packs of products including meat, fish, fruit and vegetables and cheese ensures retailers provide a meaningful comparison in a consistent and legible format. These requirements greatly enhance price transparency and price comparison for consumers.
- Specifying the position, set out, form, and minimum character size for the display of 'measurement markings' on pre-packaged products designed to ensure that consumers are provided with consistent, easily accessible, noticeable and legible information about the quantity of product in packages.

Principles based regulation

CFA considers that although the Act could be clarified by rewriting and made simpler to use for both consumers and industry, the current supporting regulations work well.

The scope of Australia's Measurement Laws Discussion Paper states that '*The main drawback of principles-based legislation is a lack of precision. There is more ambiguity and room for subjective interpretation in principles-based approaches than in prescriptive drafting, where there is often little room for argument about whether or not a law or rule has been breached.*'

CFA agrees with this statement and, although CFA is not opposed to principle-based legislation it believes that it is not appropriate for the National Trade Measurement Regulations in relation to Part 4 *Packaging*, to be replaced by principles which allow industry to decide on how they comply with the 'principle'. Notwithstanding the acknowledged lack of precision what is 'clear and conspicuous' in relation to a measurement statement, the actual prominence is likely to have a different significance to a consumer to that of someone involved in product promotion.

² Harper Review 2015 <http://competitionpolicyreview.gov.au/final-report>

CFA considers that a movement to a principles-based approach will not eliminate the costs associated with providing information as to quantity, but rather will shift these costs to consumers and small businesses. This will potentially result in confusion and reduce consumer confidence in business. Reforms that move away from a standardised approach would increase transaction costs.

The current Unit Pricing legislation provides for the display of unit prices to be 'legible, prominent and unambiguous' but provides no guidance on font size or contrast. This has led to supermarket shelf labels (particularly bottom shelf labels) to be unreadable to consumers. This particularly impacts the elderly and infirm.

The adoption of a prescriptive approach to the measurements used for some commodities is reflective of the efficiency gains that may be attained through a standard system of measure. This is clearly demonstrated by Australia's decision to adopt the SI system of measurements.

The majority of the Australian retail, packaging and manufacturing sector currently comply with the Act and regulations. They have established systems which enable them to comply and compete in both the local market and for export. Removal of some of the existing protections would not only affect consumers but could have an adverse effect on local packers, manufacturers, and producers. For example, currently packers are required to place the quantity statement on the principal display panel which protects both consumers and local industry from the unfair practice and competition from 'size shrinkage' of imported products.

CFA does not accept that the current law creates an unnecessary burden for business and supports the continuation of current regulations designed to ensure that consumers have access to consistent, comparable information including the price per unit of measurement, and where and how legal metrology information is provided on package labels.

Sale of packaged and non- packaged goods

Sale by net weight has been an accepted practice for many years and with modern weighing technology it is relatively easy for a retailer when weighing gross to subtract the weight of the bag or receptacle.

CFA supports the retention of specific requirements for minimum font heights and colour contrast. Providing quantity information that is very easy for consumers to notice and read is most easily achieved by requiring minimum font size and colour contrast.

CFA also notes that the requirements are expected to be reviewed in future and the power to introduce requirements for certain goods to be sold by reference to measurement will be retained. However, CFA is concerned by the statement 'streamlined under all options'. CFA is unclear as to the meaning of 'streamlined' in this context.

The legislative requirement to sell specific products in a certain manner is important to consumers and because the majority of retailers are already complying with current regulations. CFA does not support the view that this places an unreasonable regulatory burden on retailers.

Requiring the provision of the price per kilogram on random measure packages of products such as meat, fish, fruit and vegetables and cheese ensures retailers provide value comparison information for consumers in a consistent and legible format. These requirements greatly enhance price transparency and price comparison for consumers

CFA believes that affording '*industry the flexibility of determining whether to sell their goods by measurement and, if so, the type of measurement they wish to use*' as stated in the Department of Industry *Measurement Based Transaction Discussion Paper* is detrimental to consumers and would increase costs to businesses, particularly small businesses. The example provided in the Paper that '*the price of bulk grain is determined based on weight and quality, with the quality determined by a number of factors including protein measurements*' refers to a highly specialised industry regulated by international protocols and has no parallel with retail transactions.

Clear directives are also required for weighing and measuring instruments positioning in full view of the customer and permissible tolerances in relation to accuracy.

It is also important to consumers that the price is consistent by reference to a price per kilogram not, for example, a mixture of price per 100 grams and price per kilogram.

Sale of meat

CFA supports the proposal that requirements to sell meat by weight will be retained as mentioned in the RIS. Removing the requirement that specific goods are sold in a particular manner would leave consumers open to misrepresentation or fraud. For example, allowing lamb chops to be sold by count where the chops, although visually appearing substantial, are in fact thin. When chops are sold by weight the price reflects the thickness and prices are easily compared by the simple reference to price per kilogram. Where the transaction is based solely on count the buyer is totally dependent on the propriety of the seller as to the actual value.

CFA also recommends that the definition of meat be redefined to include meat that has been subject to processing so that meat includes reconstituted meat and meat that has been stuffed or wrapped around other food. This would assist consumers to compare the price of meat with reconstituted and processed meat.

Sale of beer, wine, and spirits

CFA supports the proposal that requirements to sell certain types of alcohol by volume will be retained as mentioned in the RIS. However, CFA recommends that the legislation is reviewed to make it more comprehensive and easier to understand and enforce. Under the National Trade Measurement legislation, the method of determining quantity of alcoholic drinks has evolved into a set of requirements leading to a mismatch of different approaches on how, and which alcoholic drinks, are controlled. For example:

- The requirements for non-prepacked sprits only apply to the sale of brandy, gin, rum, vodka and whisky and the size of each spirit drink (15mL, 30mL or 60mL) is controlled by the quantity dispensed from an approved sprit dispenser or a batched tested simple (pouring) measure. The size of the drink is controlled by the pattern approval process.
- Beer, stout and ale must be sold in batch tested 'glasses' which may be any size. The size is difficult to determine by the purchaser because the quantity is hidden on the base and cannot be easily seen until the beer has been consumed. The marking anomaly came out of negotiations between States/Territories who compromised to achieve national agreement. The base marking is unhelpful to consumers and out of step with international legislation.
- The quantity of wine sold by the glass is not controlled by the National Trade Measurement Regulations, but some sellers use a badged measure purporting the quantity and others pour to a line or emblem embossed on the glass. The line or

emblem is notionally set at 150ml to provide for five glasses to a bottle. This practice has been determined by NMI not to be a sale by measure. CFA has no hard data but anecdotal evidence from inside the trade indicates that some licensees give a more generous measure while others have glasses with line set at 130ml or as low as 120ml.

This mixed approach to the sale of alcohol is detrimental to consumers economic wellbeing and health. Notwithstanding any consumer loss in relation to the quantity purchased, given the importance of accurate measurement in relation to health and road safety CFA recommends that the sale of wine and spirits be reviewed with a view to ensuring wine is sold in specified quantities; the current spirit provisions are extended to other spirits and the capacity of beer and wine glasses be stated on the side, where consumers can readily see the quantity, they are purchasing.

Location of the quantity statement and cosmetics

CFA believes that the quantity information is basic information that needs to be shown on the main display panel of all pre-packed items. This is important to ensure that the information is easy for all consumers to locate and the location is consistent across all packages. It also assists consumers in identifying where quantity is reduced but the selling price remains the same.

In a 2014 national survey undertaken for Choice 74% of over 3,000 consumers said it was 'very' or 'somewhat important' that the quantity information be shown on the front of the pack.³

CFA notes that the EU has a relaxed attitude to labelling cosmetics. However current Australian requirements align with international best practice where, as stated in the RIS, OIML R79⁴ recommends the quantity declaration on the main display panel.

CFA notes that under RIS *Option 1 – Streamline with minimal changes* it is proposed to introduce an exemption for cosmetic products where the measurement mark is required to only be 'prominent and legible'. This submission discusses above the difficulties with the term 'prominent and legible' in legislation, but it is also CFA's concern is that if the cosmetic industry can successfully argue for a relaxation in requirements, it establishes a precedent for any group importing pre-packed items to successfully argue for the same relaxation.

The cosmetic industry has to date been unsuccessful in lobbying different Governments over many years to remove the positioning requirement that controls the size, orientation, and position of the quantity statement on pre-packed cosmetics citing cost. While there may be some cost benefits for industry there appears to be little consideration of the benefit to consumers not having to spend time searching for the quantity to facilitate comparing the cost of cosmetics including everyday creams and hair products. 'Cosmetics' include many day-to-day purchase items such as hair and skin care products where it is important that consumers can easily compare the quantity of different products. Comparison currently made easier because the quantity is on the main display panel.

There is no evidence that any cost savings would be passed on to the consumer.

³ www.choice.com.au/about-us/media-releases/2014/september/choice-unwraps-industry-push-to-hide-shrinking-packs

⁴ International Organisation for Legal Metrology International Recommendation OIML R 79 Labelling requirements for prepackaged products

Public weighbridges

CFA supports the current licensing system for public weighbridges. Public weighbridges provide an important function for both the public and business. They are an important part of buying and selling goods and assisting the public to accurately establish the weight of vehicles (caravans, trailers etc) and loads enhancing road safety. The current licensing system facilitates confidence that the measurements are accurate and conducted in an appropriate manner.

Compliance and enforcement arrangements

CFA supports the use of flexible legislative tools to ensure compliance with the legislation including, as discussed in the RIS (*Additional compliance and arrangements across all options*), infringement notices, civil penalties, court orders and corrective notices. CFA is aware that currently the ACCC successfully use a range of different penalties and remedies including requiring training programs and securing finance to conduct actions supporting general compliance. CFA recommends that corrective notices carry a penalty for non-compliance with the corrective instruction.

The RIS confirms that NMI has only conducted six prosecutions in the ten years since it took over the administration of trade measurement from the State and Territories. Given the level of non-compliance that has been reported by NMI and the number of prosecutions that took place under the previous State and Territory administrations, CFA considers that the record of prosecutions is extremely disappointing. Whereas prosecutions may not be a measure of successful enforcement activity, prosecutions send a clear message to industry that certain practices, behaviour and lack of internal compliance structures will not be tolerated.

CFA recommends that changes are made to the legislation to enable full transparency of NMI activity in relation complaint handling, enforcement action and prosecutions. It is noted that currently the NMI does not inform complainants the result of investigation into their complaints. CFA believes that this lack of transparency discourages complaints, prevents useful publicity of wrongdoing, and could facilitate lack of accountability by, and public oversight of, NMI.

Although not the subject of the current measurement review CFA recommends a review of the tasks performed by NMI Inspectors in the field. In the course of a year NMI Inspectors visit many retail shop and packaging premises where their location and legislative knowledge are ideally suited to examine goods for compliance with unit pricing, free range eggs and country of origin legislation. CFA acknowledges that ACCC currently administer the legislation but authorising the NMI Inspectorate to examine products for additional legislated information has both economic and consumer benefits.

Pattern approval

CFA accepts that modern technology is innovative and often requires a quick response from authorities to enable new technology to be used. For many years the design and function of instruments has been subject to pattern approval which ensures that the instrument meets specific criteria. CFA recommends that any changes to the way in which measuring instruments are approved as suitable for trade includes requirements that an instrument, sustains accuracy, prevents fraud in its use and quantity indication is clear, easy to understand and readily visible to the purchaser.

