



Australian Government
**Department of Industry,
Science and Resources**

Inquiry into the administration of Commonwealth regulations

Submission from the National Measurement Institute;
Department of Industry, Science and Resources

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The Department of Industry, Science and Resources (the department) welcomes the opportunity to provide a submission to the inquiry into the administration of Commonwealth regulations. This submission outlines the role of the National Measurement Institute (NMI), as a division of the department, in regulating Australia's measurement system, and addresses the inquiry terms of reference, in particular, in relation to matters contained in the Auditor-General's Report, No.5 of 2023–24 [Trade Measurement Compliance Activities](#) (23-24 ANAO Report).

Introduction

The NMI maintains Australia's measurement system by administering the *National Measurement Act 1960* (the Act).

The Act:

- establishes a national system of units and standards of measurement
- provides for their uniform use throughout Australia to ensure traceability of measurement
- regulates the supply of goods (including packaged goods) and services by measurement and the measuring instruments that must be used for trade.

Consistency and certainty in measurement supports fair and open competition by providing a level playing field for businesses. Reliable measurements help consumers and businesses make informed buying decisions and instil trust that consumers are getting what they paid for. More broadly, accurate and reliable measurements provide the foundation for an efficient and effective market.

Background

The governance and organisational structures for NMI regulatory functions have undergone significant reform since 2010 when responsibility for trade measurement transitioned from the states and territories to the Commonwealth.

In 2015 and 2018, NMI sought independent reviews of regulatory effectiveness. Following the 2018 review it was noted that '*NMI has commenced and made, considerable progress on a program of reform to develop its regulatory approach and practice to become a modern risk and outcomes-based regulator*'¹.

Further recommendations for improvement of NMI's regulatory approach were contained in the 23-24 ANAO Report. In response NMI broadly agreed with the 6 recommendations in the 23-24 ANAO report, 2 have been closed and 4 remain on track for completion by September 2024. The list of recommendations is included in Table 1 below.

¹ Executive Summary – Trade Measurement Regulatory Review – Nous – 9 April 2018.

Table 1 – Recommendations in the 23-24 ANAO report

Recommendation number	Recommendation
Recommendation no. 1	The Department of Industry, Science and Resources implement stronger controls that ensure persons undertaking monitoring and compliance activities have been appointed in accordance with the relevant legislation, and that appropriate records are made and retained of all appointments
Recommendation no. 2	The Department of Industry, Science and Resources improve its record keeping processes to ensure that trade measurement business information and records are accurate, fit-for-purpose and are appropriately stored within departmental systems.
Recommendation no. 3	The Department of Industry, Science and Resources put in place an improved approach to assessing the risk of legal metrology regulatory non-compliance at the industry and trader levels, and a transparent process that reflects the assessment of risk for selecting industries for targeting under its annual National Compliance Plans
Recommendation no. 4	<p>In its activities related to the <i>Tobacco Plain Packaging Act 2011</i> and the <i>Tobacco Plain Packaging Regulations 2011</i>, the Department of Industry, Science and Resources ensures that:</p> <ul style="list-style-type: none"> a. appropriate priority is given to its responsibilities under the <i>National Measurement Act 1960</i>; b. its directions to officers are limited to the undertaking of education and investigation activities to promote compliance with the provisions of the legislation; and c. it is complying with its duties and obligations to those officers under the <i>Work Health and Safety Act 2011</i>.
Recommendation no. 5	The Department of Industry, Science and Resources strengthen its approach to conducting follow-up audits where an initial trader audit identifies non-compliance such that follow-up activities are conducted in a timely manner, regulatory action taken where there is continuing non-compliance and appropriate records made and retained.
Recommendation no. 6	<p>As regulator of Australia’s legal metrology system, the Department of Industry, Science and Resources:</p> <ul style="list-style-type: none"> a. apply <i>Resource Management Guide 128: Regulator Performance</i>; and b. establish indicators of, and report on, the effectiveness of its regulatory approach.

Against this backdrop of continuous improvement, NMI has reviewed the Act and is pursuing a legislative reform agenda that commenced in 2017 and has included extensive consultation. Legislative reform will introduce a principles-based framework to reduce regulatory burden upon business.

Assessment of compliance risk

The NMI's measurement regulator² undertakes trade measurement compliance activities in accordance with an annual risk-based national compliance plan³. The plan is informed by a risk assessment that combines market intelligence, consumer complaints, stakeholder feedback, compliance history data sets and industry sector risk ratings. Risk ratings are developed for each industry sector across three timeframes: the previous financial year; the previous 3 financial years; and the previous 5 financial years ensuring short and longer-term trends are identified and considered when selecting industry specific compliance activities. The risk rankings are then compared with market share, and previous industry-sector activity to determine the target industries for the forward financial year. Additionally, feedback is sought from key industry stakeholders to inform the national compliance plan.

In response to recommendation 3 of the 23-24 ANAO report⁴ relating to implementing an improved approach to assessing the risk of regulatory non-compliance at the industry and trader levels, NMI's measurement regulator has updated its risk assessment for trader selection by including additional data sets to provide a greater understanding of industry attributes such as size and revenue. The NMI applied the updated risk assessment when developing the 2024-25 national compliance plan. Further reviews of the risk assessment will be undertaken throughout the 2024-25 financial year to identify and implement further improvements to the risk assessment.

Compliance and enforcement strategies

Current Approach

The current approach seeks to ensure that the regulatory environment strikes the right balance between efficient markets and community expectations⁵. It focuses on the principles of proportionality, consistency and transparency and takes a risk-based approach when determining how to target compliance activities.

The NMI's measurement regulator has a national team of trade measurement inspectors with deep regulatory skills, providing an in-demand service for Commonwealth regulators. For example, NMI trade measurement inspectors conduct inspections at business premises for the Department of Health and Aged Care in relation to Tobacco Plain Packaging (TPP) and fuel quality sampling for the Department of Climate Change, Energy, the Environment and Water⁶. Funding is provided by the administering departments for the provision of inspection services.

Following recommendation 4, 2023-24 ANAO report⁷ the NMI is reviewing the TPP inspection risk assessment and has developed an accountability framework to ensure all work undertaken by trade measurement inspectors is prioritised appropriately.

² The NMI's measurement regulator is the Legal Metrology Branch within the NMI.

³ The national compliance plan is internally published and establishes the target sectors Trade Measurement Inspectors will audit during the forward financial year.

⁴ Page 33 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

⁵ [National Compliance Policy](#), Legal Metrology Branch.

⁶ The Department of Climate Change, Energy, the Environment and Water (DCCEEW) administers the *Fuel Quality Standards Act 2000*. NMI is the service provider to support DCCEEW's regulation of this legislation.

⁷ Page 43 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

Compliance Tools

The NMI follows an escalating regulatory intervention model. Compliance statistics indicate most businesses want to comply, therefore most interventions are low-level, educative activities⁸, however other responses are also used, as illustrated below:

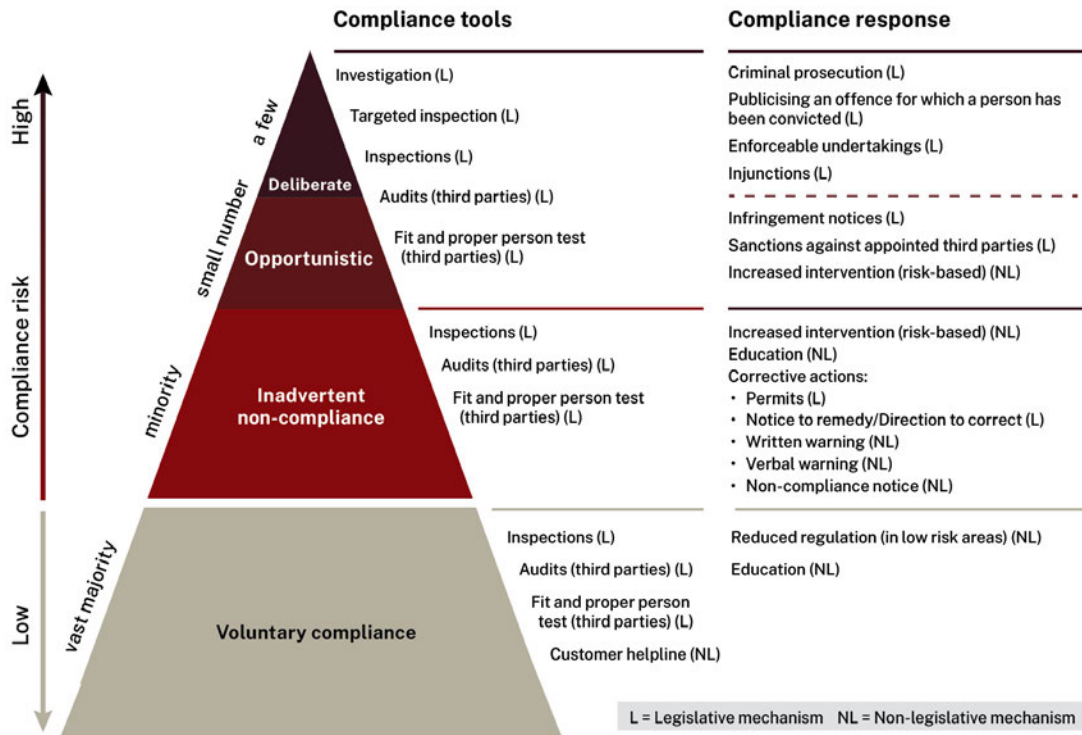


Figure 1 – NMI’s escalating regulatory intervention model

Effectiveness of compliance tools

The NMI has a policy to follow-up all non-compliance issues identified. Mostly these follow-ups will involve physical inspections, but NMI also conducts ‘desktop’ audits for less serious non-compliance. The results of follow-ups are regularly analysed to assess the effectiveness of regulatory responses. For example, in 2018, NMI undertook a concentrated audit program at major supermarkets which led to 2 enforceable and 1 administrative undertaking with the supermarkets. A further audit program in 2020 identified that overall compliance had improved from 43.9% to 81.7%.

Each year, NMI undertakes a ‘Compliance Confidence’ program⁹. Its scope is to inspect previously audited industries to evaluate change in behaviour and ensure ongoing compliance. This data is then considered as part of the risk assessment for future work. During 2024-25, NMI will review the effectiveness of its frequently used regulatory tools. The following table shows the initial analysis that NMI has completed on the past 4 years of inspection data of frequently used regulatory tools.

⁸ See table 3 - Effectiveness of frequently used tools - 2020-2024

⁹ The Compliance Confidence Program is a National Inspection Program within the National Compliance Plan.

Table 2 – Effectiveness of frequently used tools - 2020-2024

Regulatory tool used following identification of non-compliance	% of Businesses compliant at next inspection
Education & Non-compliance notice	75%
Warning Letter	71%
Infringement notice	61%

Identification of and addressing incidences of non-compliance

Training and appointment of inspectors

Before being appointed as a trade measurement inspector, all officers must first attain:

- Certificate IV in Government (Investigation) and
- Certificate IV in Government (Trade Measurement).

Whilst the 23-24 ANAO Report did not identify that any statutory powers were used by non-inspectors, NMI recognised that inspector appointment administration needed improving. In response to 23-24 ANAO Report recommendation 1¹⁰, NMI implemented a central instrument of appointment and regularly reviews the currency of all its trade measurement inspectors.

Inspection & Investigation Procedure

In response to 23-24 ANAO Report recommendation 5¹¹, relating to strengthening NMI’s approach to conducting follow-up audits where non-compliance has been previously identified, NMI has produced the following documents:

- ‘Inspectors Manual’ - A comprehensive guide designed to equip trade measurement inspectors with essential instructions and guidance to conduct trader audits and interpret the requirements of the *National Measurement Act 1960*.
- ‘Trade Measurement Services Accountable Leadership’ - Provides all trade measurement managers and supervisors with a governance structure designed to provide leadership and ensure accountability of trade measurement inspectors involved in the delivery of NMI’s regulatory function.

By September 2024, NMI will introduce an internal auditing procedure to ensure that the requirements of these two procedures are being followed by its staff.

Record Keeping Processes

The NMI has undertaken the following actions in response to 23-24 ANAO Report recommendation 2¹²:

¹⁰ Page 21 – [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

¹¹ Page 51 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

¹² Page 25 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

- Instructions to trade measurement inspectors and staff involved in the storage of information on the departments Trade Measurement Activity Recording system (TMARS)
- Training for trade measurement inspectors and other staff on document storage requirements
- Procedural updates regarding the storage of physical records, such as trade measurement inspectors' notebooks
- Auditing the way data is stored upon TMARS.

Determining the appropriate outcome

The NMI applies an escalating model to compliance based on risk¹³. Typically, where non-compliance results in a low harm and there is minimal likelihood of continued non-compliance then low-level compliance tools are used. As the risk and harm associated with the non-compliance increases, or where there is repeat non-compliance, NMI will escalate the compliance tools used.

Decision making is guided by NMI's '*Non-Compliance and Enforcement Protocol*'. This supports the *National Compliance Policy*¹⁴ by giving specific criteria to help determine the appropriate regulatory response for non-compliances. It is based on the principles of proportionality, consistency and transparency in all decisions. NMI commits to:

- Make evidence-based decisions, without bias or influence.
- Be firm but fair, consider what we want to achieve and whether there is a less onerous way to change non-compliant behaviour.

Most compliance issues NMI detects are generally not categorised as serious criminal activity but rather a lack of knowledge of the requirements or negligence. The resulting harm is usually economic in nature rather than occasioning other harm associated with criminal behaviour.

One of NMI's driving compliance principles is 'proportionality' and, accordingly, most outcomes are lower-level administrative actions. The following table shows NMI's enforcement outcomes for the past 4 years. Warning letters and infringement notices are the most used tools.

¹³ See Figure 1, above

¹⁴ [National Compliance Policy](#), Legal Metrology Branch.

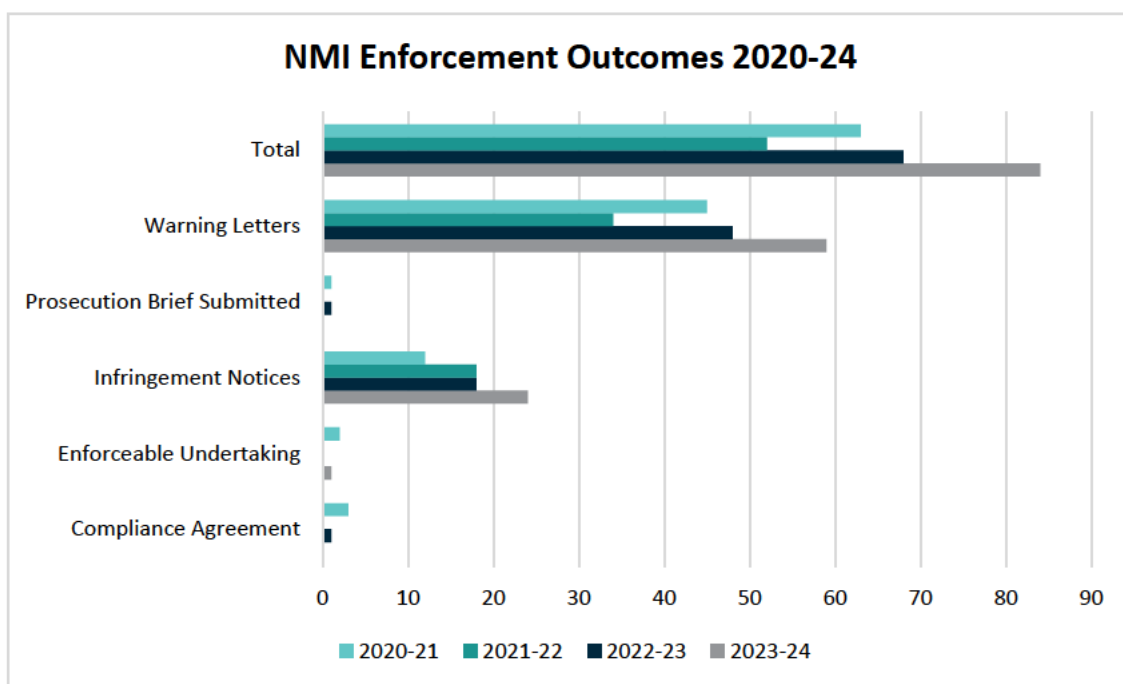


Figure 3 – NMI enforcement outcomes 2020-24

Since 2019, NMI has also used co-operative agreements (i.e. Enforceable or Administrative Undertakings) as an alternative to traditional regulatory responses. These agreements have been highly effective in changing behaviour and embedding a culture of compliance within organisations. Agreements have been successful across several industries including supermarkets, fuel service stations, licensed premises, food importers and servicing licensees¹⁵.

The NMI also undertakes education and awareness-raising with industry to promote good practice. For example, in 2022 NMI assisted a trade association in the licensed premise industry to produce a campaign to provide best practice advice to its members just prior to a concentrated audit program in the licensed premise sector. This initiative helped to increase instrument compliance levels from 85.5% to 97.7%.

Performance and evaluation frameworks for compliance with Commonwealth regulations

Regulatory performance measure

NMI's measurement regulator has responded to *RMG 128 Regulator Performance* by introducing a new performance measure in the department's 2024-25 Portfolio Budget Statement¹⁶. The performance measure is that '*National Measurement Institute engagement with traders increases compliance with fair measure regulations*'.

¹⁵ The independent contractors licensed by the NMI to provide measurement services -

<https://www.industry.gov.au/national-measurement-institute/trade-measurement/servicing-licensees>

¹⁶ Page 47 of the Portfolio Budget Statements 2024-25 budget related paper no.11.1 Industry, Science and Resources portfolio. <https://www.industry.gov.au/sites/default/files/2024-05/2024-25-department-of-industry-science-resources-pbs.pdf>

The introduction of the new performance measure combined with the publication of non-statutory performance measures in the annual 'NMI's legal metrology priorities'¹⁷ and 'Compliance with Measurement Regulation' report¹⁸ addresses recommendation 6(b)¹⁹ of the 23-24 ANAO Report.

Statement of expectations and intent

Recommendation 6(a)²⁰ of the 23-24 ANAO Report stated that the department apply *RMG 128 Regulator Performance* which requires a statement of expectations. At the time of this submission, a statement of expectations was not in place for NMI's measurement regulator, however a draft is being prepared for the Minister's consideration. Once the statement of expectations is received from the Minister, NMI's measurement regulator will respond with a statement of intent. These documents will be published on the department's website when finalised.

¹⁷ <https://www.industry.gov.au/news/nmis-legal-metrology-priorities-2023-24>

¹⁸ National Measurement Institute Compliance with measurement regulation report 2022-23
https://www.industry.gov.au/sites/default/files/2024-02/compliance_with_measurement_regulation_in_2022-23_final.pdf

¹⁹ Page 60 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)

²⁰ Page 60 - [Trade Measurement Compliance Activities – ANAO – 5 September 2023](#)