EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 151

Issued by the Authority of the Minister for Innovation, Industry, Science and Research

National Measurement Act 1960

National Measurement Amendment Regulations 2009 (No. 1)

The principal objects of the National Measurement Act 1960 (the Act) are to:

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

Section 20 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 for carrying out or giving effect to the Act.

The Commonwealth has sole responsibility for the pattern-approval function in Australia under the Act. This is a specialised service for which the Commonwealth charges fees.

Paragraph 20 (1) (l) of the Act enables the National Measurement Regulations 1999 (the Principal Regulations) to prescribe a fee for activities undertaken in respect of the examination and certification of patterns of measuring instruments. Schedule 13 to the Principal Regulations prescribes fees for pattern approval activities. Pattern approval is granted to a design of a measuring instrument which meets the requirements of the national measurement legislation which ensure that it is suitable for use for legal purposes including trade.

The purpose of the proposed Regulations is to amend the Principal Regulations to vary the rates charged for pattern approval activities to reflect increasing costs and to make miscellaneous amendments to the Principal Regulations of a minor and machinery nature. The relevant cost components have been identified for recovery under the Australian Government's Cost Recovery Guidelines.

The underlying principle behind the Cost Recovery Guidelines is that agencies should set charges to recover all the costs of products or services where it is efficient and effective to do so, where the beneficiaries are a narrow and identifiable group and where charging is consistent with Australian Government policy objectives. The
identified cost components of the fees are: salaries; operational expenses; property expenses; Comcare; and depreciation of assets.

Section 90B of the Principal Regulations defines three levels of fees depending on the kind of measuring instrument. Level 1 is for simple devices such as spirit measure cups. Level 2 is for devices such as fuel dispensers and load cells. Level 3 is for devices such as bulk flow meters.

The revised pattern approval fees will increase the existing fees by amounts that vary from 1% to a maximum of 4% and represent an overall increase of approximately 3%. No new fees are introduced and no existing fees are repealed. The three levels listed in the fee schedule apply to standard instruments as defined in the Principal Regulations. These levels take into account the different examination and set-up times, instrument complexity and test equipment required for simple and complex instruments. Level 1 is for simple devices such as spirit measure cups. Level 2 is for devices such as fuel dispensers and load cells. Level 3 is for devices such as bulk flow meters.

The fee changes are in line with provisions of the Cost Recovery Impact Statement of the Department of Innovation, Industry, Science and Research.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Sections 4, 17 and 18 of the Legislative Instruments Act 2003 require details of consultation undertaken to be provided in the Explanatory Statement accompanying such instruments or their exemption from it. In the case of this legislative instrument, as only minor adjustments are being made, there is no change in regulatory policy and no new fee items introduced. In these circumstances, it is not appropriate to engage business in a consultation process.

The Regulations will commence on 1 July 2009.
Details of the proposed National Measurement Amendment Regulations 2009 (No. 1)

Regulation 1 – Name of Regulations

This specifies the name of the Regulations as the National Measurement Amendment Regulations 2009 (No. 1).

Regulation 2 - Commencement

Regulation 2 provides that the Regulations commence on 1 July 2009.

Regulation 3 – Amendment of National Measurement Regulations 1999

This provides that Schedule 1 amends the National Measurement Regulations 1999 (the Principal Regulations).

Schedule 1 – Amendments

Item 1 - Regulation 3, Definition of maximum permissible error

This amendment inserts a note after the definition of maximum permissible error (MPE) clarifying that for pattern approval certificates referring to former National Standards Commission Document 118 for the MPEs, Schedule 12 (as amended) of the regulations is now the source of those MPEs.

Item 2 – Regulation 13(2), Verification of standards of measurement

This amendment specifies that a verifying authority other than the Chief Metrologist requires the written consent of the Chief Metrologist to reverify a standard of measurement other than on application. This provision will provide the Chief Metrologist with further means to co-ordinate the operation of the national system of measurement consistent with the objects of section 4(1)(c) of the National Measurement Act 1960 (the Act).

Item 3 – Regulation 16(2), Marks on, or attached to, standards of measurement, correction of minor drafting error

This amendment corrects a drafting error by removing the reference to deeming the values of Australian primary, Australian secondary, or State primary, standards of measurement equal to their denomination under regulation 30 in the Principal Regulations as this is not appropriate for these types of standards.

Item 4 – Regulation 42(h), Matters to be stated in certificates (for certified measuring instruments), correction of minor drafting error
This amendment corrects a minor drafting error by replacing an incorrect reference to ‘verification’ by a reference to ‘certification’ in the prescription of the matters which must be stated in certificates issued for certified measuring instruments.

Item 5 – Regulation 55 (i), Matters to be stated in certificates (for certified reference materials), correction of minor drafting error

This amendment corrects a minor drafting error by replacing an incorrect reference to ‘verification’ by a reference to ‘certification’ in the prescription of the matters which must be stated in certificates issued for certified reference materials.

Item 6 – Regulation 57(2)(b), Grounds for cancellation or variation of certification (of a reference material), correction of minor drafting error

This amendment corrects a minor drafting error by replacing an incorrect reference to ‘approval’ by a reference to ‘certification’ in the grounds stated in regulation 57(2) of the Principal Regulations for varying the certification of a reference material.

Item 7 – Regulation 60, Approval of patterns of measuring instrument

This amendment inserts a note after this regulation to guide readers to regulation 90AA which provides further guidance on pattern approvals issued before 1 July 2004. Further details of regulation 90AA are given under Item 10.

Item 8 – Regulation 77(1)(a), General conditions of appointment of authorities

This amendment repeals the provision for an authority appointed under the Principal Regulations to appoint a responsible agent or employee for the purposes of the appointment without the agreement of the Chief Metrologist.

This amendment will better enable the Chief Metrologist to co-ordinate the operation of the national system of measurement consistent with the objects of section 4(1)(c) of the Act.

Item 9 – Regulation 87(d)(ii), Exempt utility meters (Acts 3), correction of a cross referencing error

This amendment corrects a cross referencing error that arose from previous amendments to the Principal Regulations by guiding readers to the appropriate part of Schedule 12 for the maximum permissible errors for utility meters.

Item 10 – Pattern approval certificates issued between 1 October 1999 and 1 July 2004 and preservation of verifications and reverifications made before 1 July 2009

This item inserts a new regulation 90AA into the Principle Regulations which clarifies the validity of a small number of general pattern approval certificates issued between 1 October 1999 and 1 July 2004.

This item also inserts a new regulation 90AB into the Principal Regulations preserving the rights and entitlements resulting from verifications and reverification.
conducted in accordance with the Principal Regulations before 1 July 2009. This amendment is consequential to the amendment made in Item 2.

Items 11 and 12 prescribe a further Additional Australian legal unit of measurement for the measurement of the ‘mass concentration’ of alcohol in exhaled breath

**Item 11** – Schedule 2, Part 1, Prescription of a further Additional Australian legal unit of measurement for ‘mass concentration’

This item inserts a further Additional Australian legal unit of measurement for ‘mass concentration’ into Part 1 of Schedule 2. This is defined as grams of alcohol per 210 litres of exhaled breath.

**Item 12** - Schedule 2, Part 2, Prescription of the purpose for which the further Additional Australian legal unit of measurement of ‘mass concentration’ may be used

This item prescribes the purpose for which the further Additional Australian legal unit of measurement of ‘mass concentration’ may be used as for the ‘measurement of the mass concentration of alcohol in exhaled breath’.

**Item 13** – Schedule 12, Part 2, Prescription of maximum permissible errors for multi-dimensional measuring instruments

This item inserts maximum permissible errors applicable to measurements made by multi-dimensional measuring instruments in three dimensions for both initial and subsequent verifications.

**Item 14** – Schedule 12, Part 3, Division 5, Table 8, Prescription of revised maximum permissible errors for price computing devices

This item replaces the prescription of maximum permissible errors for price computing devices in the Principal Regulations which was based on the unit price of the commodity being measured, by maximum permissible errors based on the scale interval of the measuring instrument being used. This amendment brings the Principle Regulations into line with current practice in this area of measurement.

**Items 15 and 16** – Schedule 13, Revised fees for pattern approval services offered by the National Measurement Institute

**Item 15** – Schedule 13, Parts 1 to 6, substitution of revised parts

This item substitutes revised Parts 1 to 6 in Schedule 13 - Fees. The revised parts do not change the categories of fees prescribed by either adding or removing any fees. The revision of existing fees is based on identified cost components that should be recovered under the Australian Government Cost Recovery Guidelines.

**Item 16** - Schedule 13, Part 8, Additional fees for use of equipment in examination of instruments
This item substitutes a revised Part 8 in Schedule 13 - Fees. The revision of existing fees is based on identified cost components that should be recovered under the Australian Government Cost Recovery Guidelines.

Note: A significant number of the existing fees remain unchanged including the fees in Part 7 for the verification of utility meters used for trade.