



MTAA Limited

**Submission to the Department of Industry,
Innovation and Science's Measurement Law
Review**



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Executive summary of recommendations

- MTAA recommends that Government considers the need for accuracy rather than flexibility of measurement when developing measurement legislation and regulations for the automotive industry and in particular the fuel retailing and automotive servicing sectors.
- Government considers the repercussions for fuel retailers and businesses who service motor vehicles of consumer and business sensitivity to perceived and/or actual reduced levels of accuracy in the dispensing of fuel and automotive fluids/gases.
- MTAA recommends that Government opposes the introduction of the proposed principle based measurement regulatory regime for the automotive industry and in particular fuel retailing. MTAA suggests that prescribed regulatory arrangements are currently effective within the fuel retailing sector.
- MTAA recommends that if the proposed principle based measurement regulatory regime *is* introduced, the automotive industry and in particular fuel retailing is made exempt from being under such a regulatory regime.
- Government considers the ability of dominant market players to impose their will on less powerful businesses if they are provided more responsibility for measurement activities within a principle based measurement regulatory regime.
- MTAA recommends that Government increase compliance and enforcement activities if a principle based measurement regulatory regime is introduced. This may help address any negative implications associated with reduced integrity of measurement compliance and address businesses who may unfairly take advantage of regulatory requirements.

Government review of measurement regulation

- MTAA understands requirements for the Department of Industry, Innovation and Science (the Department) to identify any aspects of Australia's measurement framework that can be modernised, streamlined or simplified to better meet the needs of a modern economy.
- MTAA appreciates the opportunity to present an automotive industry endorsed policy position on what *should* and *should not* be addressed by the legislative framework underpinning Australia's measurement system.
- MTAA applauds the Department's efforts to consult with industry stakeholders who are directly impacted by Australia's legislative and regulatory frameworks governing measurement and to provide recommendations to inform the development of policy options of the scope of Australia's measurement laws and how different options may impact automotive businesses and the consumers who purchase their products and services.

Industry context

- The accurate measurement of fuel, gas and oil is critical for the fuel retailing and automotive servicing sectors of the Australian automotive industry.
 - For the *fuel retailing sector* accurate fuel, gas and oil measurement is critical for determining business operating costs and levels of profitability; particularly the purchase of fuel, gas and oil from wholesalers / suppliers and the sale of fuel, gas and oil to consumers.
 - For the *automotive servicing sector* the accurate measurement of oils and other automotive products is critical to ensure the correct levels of fluids are used for the safe operation of vehicles.
- The accurate measurement of fuel, gas and oil is critical to ensure that the consumers have the confidence in the quantity of product purchased.

- Accurate measurement of automotive fluids provides businesses and consumers' confidence that their vehicles have the correct amount of fluids essential for safe and effective operation.
- The automotive industry is a global industry that relies on uniform measurement internationally and Australian standards must accurately reflect those used internationally.

Current Australian regulatory arrangements

- MTAA members' fuel retailing businesses consider the current measurement regulatory requirements appropriate.
- MTAA supports Government oversight of the Australian fuel retailing industry.
- MTAA supports the compliance activities undertaken by the National Measurements Institute (NMI) through their Trade Measurement Division to provide businesses and consumers confidence of the accuracy of fuel and gas dispensing measuring devices.
- MTAA supports the enforcement and inspection activities of Trade Measurement Inspectors who have authority under the Part IX of the *National Measurement Act 1960* and the *National Trade Measurement Regulations (2009)* to inspect fuel dispensing measuring devices and close down the device or impose offences on controllers of fuel dispensers if measurement variation is beyond that permissible (+ or – 0.3%).
- Fuel retailers and other automotive businesses understand the extreme consumer sensitivity concerning fuel prices and the cost of fuel for vehicle owners and operators. Commsec estimates that in March 2018 Australian households spend on average \$235.00 per month on fuel¹. MTAA advocates that the high cost of fuel for consumers results in the accuracy of measurement being a politically charged issue that requires high levels of Government intervention.
- MTAA advocates for strict enforcement by Government regulators and inspectors to ensure the accuracy of fuel dispensers and associated measuring equipment. MTAA believes that

¹ Stephen Letts (2018) Oil Price rise likely to hit consumers with \$4 Billion headache and absorb benefits of tax cuts. Accessed 19 June 2018 at: <http://www.abc.net.au/news/2018-05-15/oil-price-rise-to-torch-tax-cuts/9762154>

Government enforcement helps maintains the credibility and integrity of the fuel retailing industry and reduces the motivation of consumers to question the accuracy of fuel dispensed.

- MTAA advocates the role of Government as independently prescribing, monitoring and enforcing compliance of fuel measurement to prevent the ability of particular businesses to undertake unscrupulous activities that may impact consumers and other businesses. MTAA considers that any shift towards industry lead regulation increases the risk of unscrupulous activities.

Proposed principle based legislation

- MTAA opposes any regulatory system that potentially lessens the robustness and integrity of Australia's fuel / oil measurement regulatory regime.
- MTAA advocates that strict Government prescriptive requirements of fuel measuring equipment and their accuracy may be compromised by a principle based measurement regulatory regime.
- MTAA advocates that a principle based measurement regulatory regime which is focused on outcomes rather than prescribed measurement processes and equipment requirements may result in less consumer and business confidence in the accuracy of fuel measurement particularly if a principle based regulatory regime involves reduced levels of Government compliance and enforcement activities.
- MTAA is concerned that a principle based regulatory regime which is focused on outcomes rather than prescribed measurement processes and equipment may result in some businesses being provided an increased opportunity to game the system particularly if a principle based regime involves reduced levels of Government compliance and enforcement activities.
- MTAA is also concerned that under a principle based regulatory environment, more powerful businesses in the fuel retailing sector may use their dominant market position to prescribe measuring processes and equipment on other businesses for their own benefit, particularly if a principle based regime involves reduced levels of Government compliance and enforcement activities. Furthermore, with reduced Government intervention the ability of less powerful businesses to raise concerns or disputes over the accuracy of measurement systems may be

compromised. For example, independent franchisees in the fuel retailing industry could be threatened with retribution if questioning the accuracy of measuring equipment used by the franchisor (particularly if a fuel or oil supplier).

- MTAA advocates for increased rather than reduced government intervention for fuel and oil measurement including compliance activities; particularly if a principle based measurement regulatory regime is introduced. MTAA urges government to increase regulatory and enforcement activities of not only fuel dispensing units at station bowsers but also measuring equipment used by wholesalers and suppliers when providing fuel to service stations.
- MTAA advocates that increased flexibility of measurement is not a priority within the fuel retailing sector. Rather fuel retailers and consumers are concerned with accuracy of measurement.
- MTAA Members businesses also call for increased inspection of fuel quality at the point of production by whatever means possible to ensure that fuel retailers are provided quality fuel at the standards set by the Australian Government.
- MTAA is concerned about increased consumer scrutiny and risk for fuel retailers if required to undertake more compliance activities as a consequence of principles based regulation and less government enforcement and inspection. For example, fuel retailers may be open to increased potential for litigation and associated costs. Such litigation may be leveraged by dominant market players to the detriment of smaller independent services stations with low capital reserves to undertake such proceedings. This example exemplifies the ability of unscrupulous stakeholders to take advantage of a principle based regulatory regime in a highly competitive and profitable market.
- MTAA is also concerned that public perceptions of reduced Government control over the accuracy of fuel measurement may expose fuel retailers to potential anger and unlawful activity from consumers. For example, it may result in an increased fuel theft (through fuel drive offs) and abuse of staff.
- MTAA is concerned that many industry stakeholders are not clear on the how a principle based regulatory approach works and how this approach would impact their businesses and business environment.
- MTAA supports a measurement regime that requires providers of electrical power for electric vehicles to be subject to strict compliance and enforcement by Government to an equivalent

level as that imposed on fuel retailers. This will ensure that electric vehicle owners will have confidence in the level of charge provided and that their vehicles are charged at the required speed and at a level of charge to maintain the safe operation of their vehicle.

Conclusion

- MTAA advocates for Government to consider the unique characteristics and requirements of the automotive industry and in particular the fuel retailing and automotive servicing sector when considering introducing a principle based fuel regulatory regime.
- MTAA argues that accuracy rather flexibility is the objective of fuel retailers and automotive servicing businesses and that this may be compromised when introducing a principle based regulatory regime.
- MTAA is concerned that a principle based measurement regulatory regime may increase the onus of automotive businesses to introduce processes of compliance rather than use those supplied by Government that may result in increased business risk (i.e. potential for litigation, increased compliance costs and the increased exposure to unscrupulous activities of dominant market players).
- MTAA is also concerned that a principle based measurement regulatory regime may be perceived as the impetus for Government to reduce compliance and enforcement activities that will decrease consumer and business confidence in fuel quantity purchased and the accuracy of the amount of fluids being used when servicing vehicles.