

**ATTACHMENT TO THE REVIEW  
COMMITTEE REPORT**

**SCOPING STUDY INTO THE  
RESTRICTIONS ON COMPETITION  
OF TRADE MEASUREMENT  
LEGISLATION**

**FINAL REPORT**

**17 MAY 2000**

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## ABBREVIATIONS

QOFT	Queensland Office of Fair Trading
PBT	Public Benefit Test
TMAC	Trade Measurement Advisory Committee

## KEY POINTS

- The potentially anti-competitive provisions of the trade measurement legislation fall into three areas. These are restrictions on — the method of sale; the use of measures and measuring instruments; and participation in the trade measurement industry.
- Key restrictions on the method of sale relate to — meat, beer and spirits; and pre-packaged goods. Non-packed meat cannot be sold by each/portion and instead must be sold by the kilogram. Spirits must be sold by volume, beer glasses must be marked with their volume and pre-packed goods must be labeled with the packer, weight and unit size. In general pre-packed goods sold in non-rigid containers must be unit priced (eg marked with the price per kg).
- The restriction on the sale of non-prepacked meat appears to impose significant costs. It limits the product range offered to consumers, may favour supermarkets and grocery stores over other retailers of non-packed meat and in Queensland favours chicken and fish over red meat. But the restriction also provides benefits for some consumers by facilitating price comparisons between retailers.
- In practice the restrictions on the sale of spirits and beer appear to have little if any adverse impact on competition but provide benefits to consumers. These restrictions are justifiable.
- The restrictions on pre-packaged goods can generally be justified. They generally help inform consumers while appearing to impose few costs. However it was not possible to justify the general practice of unit pricing pre-packaged goods sold in non-rigid containers.
- The other restrictions on competition are considered to be sound, imposing few costs while potentially generating widespread and significant benefits. These restrictions relate to the oversight of measurement standards, the prohibitions of end-and-end weighing at public weighbridges and the licensing of service organisations and public weighbridges.

- Should the Review Committee wish to maintain the restrictions on meat and the unit pricing of pre-packed goods sold in non-rigid containers, a detailed public benefit test would be required. This could cost in the order of \$200,000, with a significant share of the costs arising from the need for detailed surveys of consumer attitudes.
- Such a public benefit test would be unnecessary if these restrictions were relaxed. We consider that a reasonable case could be made for relaxation based on the work to-date.

# 1 INTRODUCTION

*Accurate and predictable trade measures are critical*

Trade measurement legislation plays an important role in the economy. By clarifying for businesses and consumers the measurement of goods offered for sale, trade measurement legislation facilitates market transactions. The cost of obtaining information on the nature of a good is reduced and buyers are given confidence that descriptions of goods are accurate. The absence of appropriate trade measurement legislation could expose consumers to unscrupulous operators, add to the cost of doing business and in so doing reduce economic welfare.

*But the trade measurement legislation restricts competition*

Some elements of the trade measurement legislation have the potential to restrict competition in the economy. The Competition Principles Agreement made between all Australian Governments in 1995 provides for the review and where appropriate reform of any legislated restrictions on competition by the end of 2000. Such a review is undertaken in the context of conducting a Public Benefit Test (PBT) of the restrictions (as opposed to the complete legislation).

*This study examines those restrictions*

Economic Insights has been commissioned to undertake a targeted scoping study of the trade measurement legislation in Queensland. The study is also to consider similar legislation in other states/territories (with the exception of Western Australia which is conducting its own review). The scoping study is to assess which restrictions on competition need to be subject to a detailed PBT and to develop a PBT plan as required.

The role of Economic Insights is to advise a Review Committee of the arguments for and against modifications to the trade measurement legislation. Responsibility for final recommendations on the future of the trade measurement legislation rests with the Review Committee.

*The study focuses on Queensland*

While the scoping study was to be based on the Queensland situation, the similarities in trade measurement legislation across most jurisdictions means that conclusions drawn from Queensland were expected to be relevant to other states/territories.<sup>1</sup> In the event, the scoping study has drawn on considerable material from and consultation with inter-state parties.

The Queensland legislation reviewed under the scoping study is as follows —

*But covers all state/territory legislation (except WA's)*

- the Trade Measurement Act 1990.
- the Trade Measurement (Pre-packed Articles) Regulation 1991.
- the Trade Measurement (Measuring Instruments) Regulation 1991.
- the Trade Measurement (Weighbridges) Regulation 1991.
- the Trade Measurement (Miscellaneous) Regulation 1991.
- the Trade Measurement Amendment Act 1999 and Trade Measurement Regulation (No.1) 1999.

In addition, the scoping study considers the amendments to the uniform trade measurement legislation agreed to by the Trade Measurement Advisory Council (TMAC) in mid-1998, which are yet to be implemented (see TMAC, 1998).

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<sup>1</sup> The main pieces of trade measurement legislation in place in each State and Territory follow uniform legislation agreed by the Ministerial Council on Consumer Affairs, supported by the Trade Measurement Advisory Committee (TMAC). The important differences are in the Trade Measurement Administration Act and regulations (which are outside the scope of this review) and the non-adoption by Western Australia of the uniform legislation.

*The Trade  
Administration  
Act is outside the  
scope of the study*

The trade measurement legislation reviewed is linked to other Commonwealth and State legislation, notably the Commonwealth's National Measurement Act and the Trade Measurement Administration Acts and supporting regulations of each state/territory. These pieces of legislation are outside the scope of this stage of the study.

## 2 THE TRADE MEASUREMENT LEGISLATION

### 2.1 A BRIEF HISTORY<sup>2</sup>

Under the Queensland Weights and Measures Act 1951, the majority of measuring instruments used for trade purposes were required to be submitted for inspection by an inspector once every twelve months. This regular inspection system had been in place in Queensland since the early part of this century. Initially there was little doubt that such a system was necessary to maintain the integrity of the measurement system. However, with the continuing improvement and sophistication of measuring systems, especially in the 1980s, regular inspection of all measuring instruments became increasingly unnecessary and wasteful of resources.

The regular inspection system also left inspectors little time to monitor other areas of trade measurement administration, namely inspecting packaged goods sold by measurement and monitoring trading practices with respect to the sale of goods by measurement.

In 1990 Ministers from each State and Territory, with the exception of Western Australia, signed a Formal Agreement to implement Uniform Trade Measurement Legislation. Queensland enacted the uniform legislation via the Trade Measurement Act 1990, with the last of the other signatory states/territories to follow suit being Tasmania in 2000.

Under the current Trade Measurement Act regular re-verification (the term used instead of “inspection”) of measuring instruments is not a

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<sup>2</sup> The material drawn upon in this section was provided by the Office of Fair Trading.

requirement. The frequency of measuring instrument re-verification is determined by the administering authority. The Act also provides for the licensing of measuring instrument servicing organisations which allows licensees to test and certify measuring instruments as suitable for trade use.

Further background to these changes and the Commonwealth's involvement in trade measurement (which centres on the setting of standards) can be found in DIST (1995) and W. D. Scott (1985).

As summarised in Box 2.1, the trade measurement officers undertake a range of activities to protect the rights of consumers and businesses, and obligations are placed on instrument owners and users and on non-packaged and pre-packaged goods. Further background on the scope of the trade measurement legislation is provided in Annex A.

## 2.2 THE OBJECTIVES OF THE LEGISLATION

*A PBT must define the objectives of the legislation*

The Competition Principles Agreement states that legislation should only restrict competition if it can be demonstrated that the objectives of the legislation can only be achieved by restricting competition. Consequently any PBT of anti-competitive legislation must be based on a clear understanding of the objectives. Common sources of information on objectives are the legislation itself, second reading speeches and accompanying policy documents.

**BOX 2.1 THE TRADE MEASUREMENT LEGISLATION IN OPERATION****PROTECTING THE RIGHTS OF CONSUMERS AND BUSINESS**

Trade measurement officers help fair measurement by conducting periodic inspections to ensure that —

- all instruments in use for trade are accurate and have been either verified (tested and passed by a trade measurement officer) or certified (repaired and passed by a licensed repairer). When an instrument is tested by a trade measurement officer a fee is charged for this service.
- goods which have been weighed or measured are correct.
- instrument owners/users are advised of their responsibilities and how to use their instruments correctly.
- complaints of alleged breaches of trade measurement legislation are investigated.

**INSTRUMENT OWNERS/USERS**

Instrument owners/users are responsible for the accuracy of their weighing or measuring instruments. They are encouraged to carry out routine instrument checks and instruments can be inspected by Trade Measurement Officers. Licensees can be engaged to repair and maintain instruments.

**NON-PACKAGED GOODS**

Where the price of an article is based on the weight or measure of the article, the trader must ensure that the weighing or measuring process and the information displayed by the weighing or measuring instrument is readily visible to the customer or give the customer a written statement of the weight or measure of the article.

There are special provisions for non-packed meat that prevent it being sold by 'each' (i.e. priced by portion). Instead, it must be priced by the kilogram.

**PACKAGED GOODS**

Goods which are pre-packed are, in the main, required to —

- be marked with the net weight or measure of the contents.
- be marked with the name and address of the packer.

**OFFENCES**

When an inspector visits a trader and finds a breach of the legislation, that trader may be issued with a letter of caution or an infringement notice or may be prosecuted. Offences which may be dealt with under this system include —

- using incorrect measuring instruments for trade – for example, shop scales, petrol pumps, weighbridges, spirit measures and beer glasses.
- using an unapproved, uncertified or unverified measuring instrument for trade.
- selling short weight or short measure goods.
- packing or selling goods not marked with a measurement statement.
- packing or selling goods not marked with the name and address of the packer.

Source: Queensland Office of Fair Trading

Key themes apparent from a review of such material on the trade measurement legislation are the importance of establishing a system of trade measurement across Australia that is uniform and accurate and promotes confidence in both businesses and consumers. The need to minimise transaction costs incurred by businesses and consumers so as to facilitate market transactions can be seen as one of the key drivers of the recent legislative reforms, with the protection of consumers also prominent.

*The objective is focussed on businesses and consumers*

The objective of the trade measurement legislation used in this study is largely drawn from the 1990 agreement amongst the Commonwealth, States and Territories (excluding Western Australia) to enact uniform legislation. That is, the objective is to —

- ❑ promote commercial certainty.
- ❑ reduce business costs.
- ❑ improve the efficiency of the trade measurement industry.
- ❑ and maintain consumer confidence through suitable protection provisions.<sup>3</sup>

## 2.3 THE POTENTIAL RESTRICTIONS ON COMPETITION

This section summarises the main provisions of the existing and proposed legislation that may restrict competition, and the nature of the restrictions they may impose. A detailed assessment of whether there are significant competition issues in practice is discussed in the next section.

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<sup>3</sup> A discussion of the need for uniformity of legislation is prominent in the material presented in Annex B. We interpret uniformity in legislation as a way of meeting the objective of reduced transaction costs etc, rather than an objective in itself.

*There are restrictions on quality, inputs and pricing*

The trade measurement legislation sets minimum quality standards for trade measurement equipment and those that operate and service such equipment. Controls on how measures can be used and the pricing, labelling and packaging of goods are also applied to help impose appropriate standards on suppliers.<sup>4</sup> For example, the legislation specifies that measuring instruments such as shop scales and weighbridges must be of a sufficient accuracy; only licensed certifiers may test and mark equipment; beer glasses or jugs must have their volume marked; non-prepacked meat cannot be sold by each; and most pre-packaged goods must be marked with a measure.

The main rationale for such restrictions is that they ensure that buyers can readily determine the measurement of the good sold and be confident that the measure is accurate.

*Such restrictions may deter alternative forms of supply*

There is often a trade-off between such restrictions and the price of a good or service. For example, beer glasses marked with their volume may tend to be more expensive than an un-marked glass. Or a weighbridge operator that doesn't seek the maximum level of accuracy may be able to offer a lower priced service by spending less on maintenance and testing. Some buyers may prefer to purchase a good measured under lower quality standards than specified in the legislation. If this is the case, competition can be restricted because lower quality operators and methods of sale are excluded from the market.

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<sup>4</sup> A supplier is an entity that provides a good for sale. For most goods the supplier is the producer of the good, who is also the packer. In some cases the supplier may only be a packer of another entity's product. The packaging requirements of the Trade Measurement legislation formally relate to the packer, which for most goods will of course be the producer. It is important to keep in mind that even when the packer and producer are different entities, there is the potential for restrictions on the packer to influence the way the producer prepares its product.

*And reduce  
innovation*

Minimum quality standards can also restrict competition by reducing innovation. For example, quality standards for some measuring instruments may fail to keep up with changes in technology and the newest equipment may be inappropriately excluded from the market.

*Administrative  
and compliance  
costs may be  
significant*

The administrative and compliance costs imposed by the trade measurement legislation also have the potential to restrict competition. This is particularly the case if the costs were so high as to make the cost of entering a market prohibitive for some potential entrants.

Table 2.1 presents a categorisation of the main potential restrictions on competition under the legislation.

TABLE 2.1 SUMMARY OF THE POTENTIAL RESTRICTIONS ON COMPETITION

	LEGISLATIVE PROVISION	POTENTIAL RESTRICTION ON COMPETITION				ADMINISTRATION COSTS
		FORMAL ENTRY/EXIT PROVISIONS	CONTROLS ON THE FORM OF PRICING	CONTROLS ON QUALITY STANDARDS	CONTROLS ON THE CHOICE OF BUSINESS INPUTS	
A	RESTRICTIONS ON THE METHOD OF SALE					
A1	Restrictions on meat	X	yes	X	X	X
A2	Restrictions on spirits and beer	X	yes	X	X	yes
A3	Labelling and measurement of pre-packaged goods	X	yes	X	X	X
A4	Labeling and packaging requirements for certain articles (e.g. some pre-packed food, eggs, bedsheets)	X	yes	X	X	yes
B	RESTRICTIONS ON THE USE OF MEASURES AND MEASURING INSTRUMENTS					
B1	The oversight of measurement standards	X	X	yes	yes	yes
B2	The prohibition of end-and-end weighing	X	X	yes	X	yes
C	RESTRICTIONS ON PRIVATE SECTOR SERVICE PROVIDERS					
C1	The licensing of service organisation	yes	X	yes	X	yes
C2	The licensing of public weighbridges	yes	X	yes	X	yes

## 3 COSTS AND BENEFITS

### 3.1 SUMMARY

RESTRICTION ON COMPETITION	BENEFITS	COSTS
<b>A RESTRICTIONS ON METHOD OF SALE</b>		
A1 Restrictions on meat	Simplifies price comparisons in some instances by providing a standard format of sale (i.e. price by kilo).	Reduces the range of meat products available to consumers, may favour supermarkets and grocery stores over other meat retailers and in Queensland favours chicken and fish over red meat.
A2 Restrictions on spirits and beer	Assists price comparisons by allowing volumes to be assessed and helps standardise the size of drinks.	Insignificant.
A3 Labelling and measurement of pre-packaged goods	Simplifies comparisons between goods by requiring the measure to be marked and in some cases the price per unit (e.g. \$ per kilo).	Would increase the cost of packaging in some cases. Costs appear insignificant.
A4 Labelling and packaging requirements for certain articles (e.g. Some pre-packed food, eggs, bedsheets)	Simplifies comparisons between goods by requiring the measure to be marked.	May restrict the choices available to consumers and increase labeling costs in some cases.
<b>B RESTRICTIONS ON THE USE OF MEASURES AND MEASURING INSTRUMENTS</b>		
B1 The oversight of measurement standards	Helps ensure measures are accurate and predictable and are presented truthfully.	Would raise the cost of measurement in some instances.
B2 The prohibition on end-and-end weighing.	Ensures accuracy in measurement by public weighbridges.	Would increase the cost of measurement or prevent measurement taking place, mainly in rural areas.
<b>C RESTRICTIONS ON PRIVATE SECTOR SERVICE PROVIDERS</b>		
C1 The licensing of service organisations	Helps ensure that the repair and maintenance of measuring instruments is to an appropriate standard.	Imposes a small cost in obtaining a licence (in the order of \$50 per year). May hinder the movement of licensees between states/territories.
C2 The licensing of public weighbridges	Helps ensure that public weighbridges provide reliable measurements.	Imposes a small cost in holding a licence (in the range of \$1,000 to \$2,000 per year).

### 3.2 THE SALE OF MEAT

*Restrictions on meat are intended to facilitate price comparisons by consumers*

Non-packed meat can only be sold as a price per kilogram, and not as each (eg a price per portion). The rationale for such a restriction is that it simplifies the process faced by consumers in choosing between retailers. This is because a standard basis for comparison is provided. It can be argued that by minimising the transaction costs incurred by consumers in obtaining information, the market may be more efficient than it otherwise would be. Further, it can help protect consumers by preventing retailers displaying a certain size product for a fixed price by each, then substituting a smaller product upon purchase. The Queensland Consumers Association advised that it has previously argued that the restriction on the sale by each should remain in order to safeguard consumer interests.

*But they can have adverse impacts on consumers*

However the restriction also has the potential to disadvantage some consumers. The meat industry is strongly of the view that market behavior indicates that some consumers prefer to purchase meat by each.<sup>5</sup> The industry's rationale is that consumers have in mind a fixed budget per meal. They also often seen to seek a certain number of pieces of meat (eg 2 per family member). The result is that the industry believes that some consumers prefer to buy by each where the cost and number is known up-front. This is seen to be simpler for the consumer than buying based on the price per kg. Of course consumers could always ask a butcher to weigh and price the required number of pieces before purchase, but the extra time taken and the potential for embarrassment if the cost is too high is seen by the industry to deter this.

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<sup>5</sup> The National Meat Association of Australia reported the results of a 1999 survey by its members of 3,195 customers. Retailers were asked to survey their customer requirements. 51 per cent of the customers surveyed preferred each pricing, 23 per cent preferred per gram pricing and 26 per cent of customers surveyed preferred per kilo pricing.

An added factor is the shift in consumer tastes towards pre-prepared meals. Meat that has been subject to some processing can readily cost more than \$15 per kg. Butchers argue that while consumers appear happy to pay such a price when purchased as each, they will tend to avoid the same product if sold at a high price per kg.

Evidence for this proposition can be found from an examination of a typical Brisbane chicken or fish shop. Unlike other states/territories, in Queensland fish and chicken are not interpreted as meat. But the cheaper chicken and fish lines are normally sold by the kg (e.g. chicken breasts, chicken legs, fish fillets), even though they can be sold by each. One reason is that it can be difficult to standardise the size of such products, which is seen by retailers as necessary if meat is to be sold by each (both in terms of providing a consistent product to consumers and allowing the retailer to manage costs). Almost all expensive lines (e.g. chicken kiev, salmon steaks), which are mainly the processed lines, are typically sold by each. Butchers consulted advised that the more expensive lines sell much more readily when priced in this way.

*The sale of prepared meat is discouraged*

The result is that the meat industry argues that consumers are not being provided the degree of processed products they would if sale by each was routinely allowed. In Queensland, the legislation is seen by the meat industry to have the additional impact of advantaging chicken and fish over red meat. Butchers argue that red meat cannot be marketed as effectively as other forms of meat. Consequently, producers of red meat are seen to be disadvantaged relative to other meat producers.

The meat retailer Lenard's provides an illustration of these issues. The firm specialises in 'ready-to-cook' chicken products and has increased its Australia-wide sales from 117,551 in 1988-89 to 8,771,846 in 1998-99. There are now 157 Lenard's stores in Australia, with additional stores overseas. Of the Australian states, Queensland is the firm's largest source of sales, followed by NSW,

Western Australia, Victoria then South Australia. The firm's preference is to sell most 'ready-to-cook' products by each (although some basic lines such as chicken wings, breasts, legs and thighs are normally sold by kilogram), arguing that sale by each is preferred by consumers (for similar reasons as outlined above). Lenard's has argued that the current Queensland legislation is restricting their expansion into 'ready-to-cook' red meat products. Table 3.1 presents a list from Lenard's of lamb products that it has developed but withheld from sale because they it is believed that they would need to be sold by each to be commercially viable.

TABLE 3.1 A SAMPLE OF LENARD'S POTENTIAL LAMB PRODUCTS

CUT OF MEAT	COOKING STYLE	INDICATIVE PRICE
Lamb kiev (primal from the leg)	Roast	\$6.00 each
Boneless leg (remainder of the leg)	Roast	\$12.00 each
Lamb noisette (mid loin)	Pan fry	\$7.00 each
Lamb rack (rest of loin)	Roast	\$6.00 each
Rolled shoulder	Seasoned roast	\$8.00 each
Lamb scotch fillet	Grill/roast	\$5.00 each
Lamb french knuckles	Casserole	\$1.50 each
Lamb cocktail balls	Mince/pan fry	\$5.00 for 20
Cullet Kilpatrick	Bake	\$2.00 each
Lamb pencil	Bake	\$2.00 each

Source: Lenard's

*And  
supermarkets and  
grocery stores  
may have an  
advantage*

A potential consequence of the restrictions on sale by each is that supermarkets and grocery stores may have an advantage over other retailers such as the independent butchers. The pre-packed meat routinely sold in supermarkets and grocery stores has the unit price marked, but the total price is also shown and normally more prominently. This means that consumers know up-front the total price and number of pieces that will be provided. This is seen by the independent butchers to attract customers at the expense of other retailers. Of course retailers of non-packed meat could pre-pack their

meat, but this is seen to undermine the marketing appeal of a butcher etc and is often difficult because of a lack of space.

*There are inconsistencies across jurisdictions*

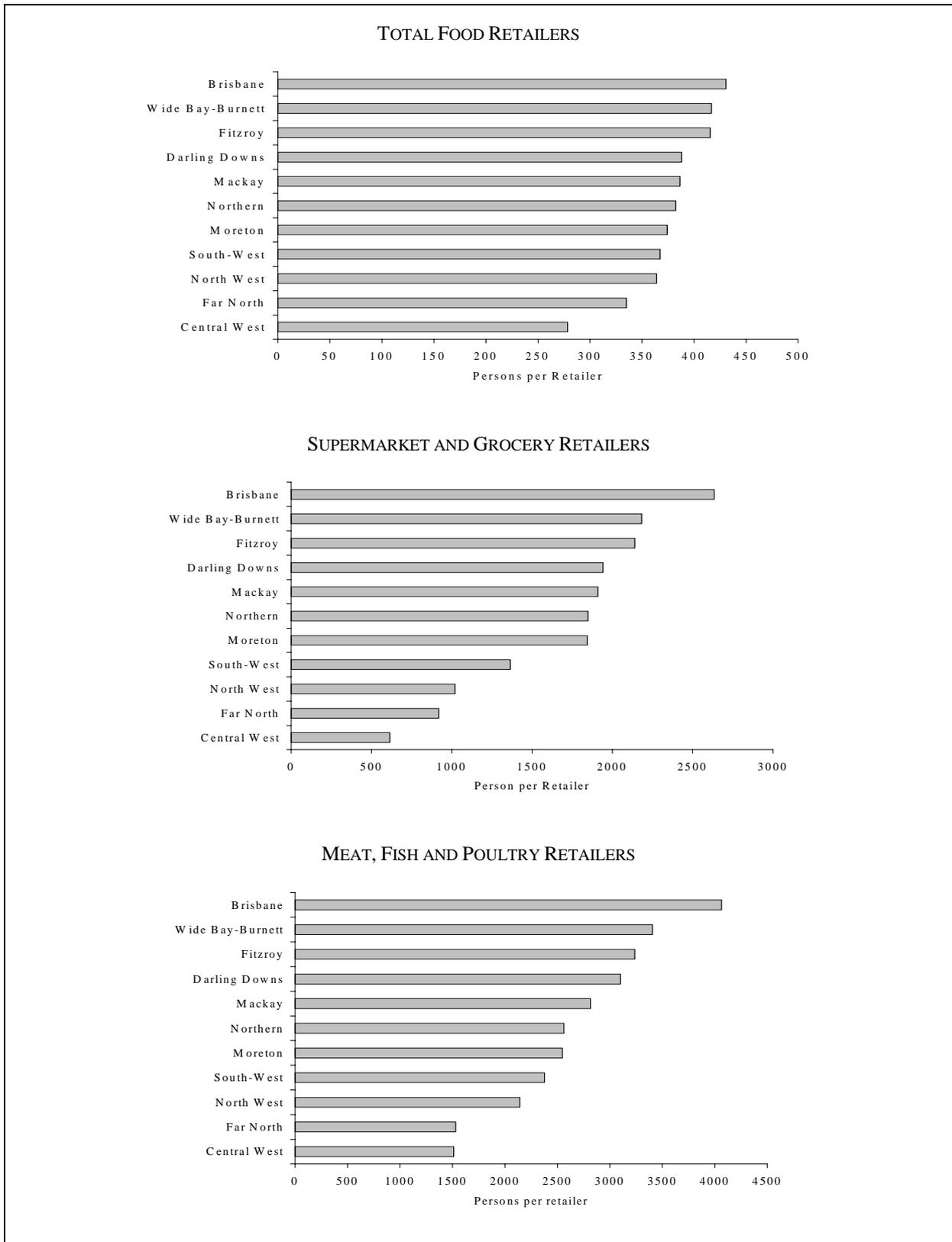
It became clear in consultation that there are various inconsistencies between the states and territories in the enforcement of the restriction. It is lightly enforced in some but not in others, and different inspectors appear to adopt different interpretations. A further complication is created by uncertainty in when a processed product ceases to be meat. This has seen a number of administrative rules emerge at the inspector level. For example, in Queensland kebabs cannot be sold by each if they are made entirely of red meat, but they can be sold by each if they contain vegetables. Such inconsistencies and administrative rules are important when analysing regulations because can indicate some confusion as to the legislative objective or that the legislation is outdated. They also tend to create unnecessary uncertainty for business.

*Pricing per kg may be a poor indicator of value*

There are two further reasons why a requirement to price by kg may be inappropriate. Firstly, in many cases it will not be an appropriate indicator of value, principally of the higher quality products (a butcher can prepare up to 400 different lines of chicken alone). Secondly, consumers have a large number of retailers to chose from. If a butcher provides poor value for money when they price by each, most consumers can easily buy their meat from another source. Competition imposes a discipline on retailers — they must provide what the customer wants.

It may be thought that this second argument is not as relevant for rural areas as urban areas. But using Queensland as an example, the available statistics point to the number of persons per shop in the capital being higher than in less populated areas (see Box 3.1).

BOX 3.1 THE REGIONAL DISTRIBUTION OF RETAILERS



Source: Australian Bureau of Statistics

While the number of shops per person is only a rough indicator of the potential for competition, it is consistent with our expectation that there is generally a reasonable degree of competition in retailing. In any event, if there is a problem in remote areas with a lack of effective competition, restricting the sale of meat to a price per kg is unlikely to prevent the exploitation of consumers.

*Actual market outcomes in New Zealand and Queensland are important*

In making an assessment of which side of the argument carries the most weight, the actual market behavior observed in New Zealand and Queensland provides important evidence. New Zealand allows all meat products to be sold by each, but in practice the more basic lines tend to be sold by kilogram. Both the peak consumer body and the responsible government department advised there were no known consumer problems created by allowing sale by each, and supported the continuation of sale by each. Similarly in Queensland, some consumers have expressed a preference for sale of some chicken and fish products by each, and there are no known complaints from consumers regarding the sale by each.

*There would be net benefits from removing the restriction*

This actual market outcome would suggest the market is sophisticated enough to determine which products should be sold by each and this need not pose a risk to consumer protection. However, consumer interest may warrant further research, particularly given the concerns expressed by the Queensland Consumer Association.

### 3.3 THE SALE OF SPIRITS AND BEER

*Beer and spirits must be priced by volume*

The Trade Measurement (Miscellaneous) Regulation 1991 specifies that beer, stout, ale and certain spirits (i.e. brandy, gin, rum, vodka and whisky) must be sold by volume. This has the effect that beer sold by the glass must be sold in a glass marked with its volume. The National Standards Commission certify measuring instruments for specified spirits on the request of industry. Currently, market forces have resulted in industry standards for approved measures in 15 ml,

30 ml and 60 ml sizes (although technically they could verify any volume), so the specified spirits must be sold in these units.

*But there are no restrictions on wine*

There are no restrictions on the sale of wine other than that it must be priced by volume. This means that wine can be sold in any form of glass and in any size. It is understood that wine is not controlled because of the difficulty of either standardising what constitutes a full glass or the opposition to adding a volume measure (eg a line) to glasses.<sup>6</sup>

*Wine may be seen to be advantaged*

The different treatment of wine may be thought to confer an advantage to wine over beer and spirits, with beer probably the main concern. At first glance the requirement to use marked glasses for draught beer would appear to limit the ability to present beer in ‘up-market’ glasses or in a particular style sought by a restaurant etc. An example was raised in consultation where a North Queensland restaurant argued they lost a regular tourist trade because they could not present beer in a large enough glass.

However, there are a number of reasons why in practice this is unlikely to be the general case —

- Beer can be sold in a glass of any volume, and not simply the pots, middies, schooners etc commonly used.<sup>7</sup> So a seller can mark any glass with the required volume measure (provided it is an accurate measure of volume). The cost of etching a glass with the volume was quoted as around 10 cents per glass, compared to the cost of a standard beer glass of around 50 cents.<sup>8</sup> This cost is insignificant relative to the value of product sold per glass over

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<sup>6</sup> A beer glass must be filled to either the top or a line marked on the glass. This gives the venue some flexibility to vary the head on the beer and therefore how much is sold. There is considerably more variability amongst wine users as to what constitutes an appropriately full glass, particularly given the variability in the size and shape of wine glasses.

<sup>7</sup> Note that there is no regulation of the required volume of a pot etc.

<sup>8</sup> There would also be a cost incurred in having glasses batch tested to verify their accuracy.

time and is very unlikely to be a significant deterrent to marking alternative glasses (in most cases).

- The more expensive beers that are most likely to compete with wine are typically sold by the bottle and not as draught. Beer bottles are marked with their volume, and provided the bottle is provided to the buyer, there are no restrictions on the type of glass it can be poured into.
- Beer producers have an incentive to provide restaurants, bars etc with an appropriate style of marked glass. This would tend to lessen any advantage held by wine. For example, it is common for the release of new beers to be accompanied by a supply from the producer of special glasses to help market the beer.

*Marking beer glasses helps consumers*

The marking of beer glasses helps consumers easily compare the value of money offered by different suppliers. As the types of draught beer available are fairly standardised, a key indicator of value is volume. Should prices differ, it is reasonable to expect consumers to assess whether the ambience, facilities etc offered by the venue justify the difference.

There is some potential for consumers to be misled by slight differences in the standard drink size. For example, a pot glass is 265 ml in some Brisbane venues but 285 ml in others. It is considered that consumers are sufficiently sophisticated to identify and respond to such minor differences if considered important (e.g. by moving to a different venue).

*The restriction on spirits is unlikely to be significant*

With respect to restricted spirits, the legislation neither restricts the size of drinks that must be sold nor the glass that must be used. But as noted, drinks are either 15 ml, 30ml or 60 ml (or potentially some multiple) because of the limits on available measuring instruments. The industry norm that has emerged is that a drink containing 15 ml of spirit is a half, a 30 ml drink is a standard drink and a 60 ml drink is a double. There is a potential restriction to competition to the

extent that bars etc cannot sell drinks in any size, where this may be preferred by consumers. But as noted this restriction arises from the National Standards Commission and not the trade measurement legislation under review.

*But helps  
promote sensible  
drinking*

Nevertheless, the restriction under the trade measurement legislation is probably beneficial in that it is part of the system that has led to the emergence of standard size drinks. This probably helps customers monitor their alcohol consumption and promotes sensible drinking practices.

*And compliance  
costs are small*

The main costs imposed by the restriction on spirits appear to be the cost of purchasing, installing and maintaining the measuring instruments and the potential for a bias in favour of non-regulated spirits and liqueurs (which can be sold in any volume). We were advised that the cost of purchasing a single measuring instrument is around \$125 for an electronic measure (venues would normally have many such instruments). While maintenance costs are understood to be significant, the total cost of compliance appears very small and there are benefits for venues in stock management in using accurate measures. In total the net compliance costs are considered very small.

The potential for a bias in favour of other spirits and liqueurs has been difficult to assess. It appears that such liquor is often sold by the same (non-electronic) measure as used for the regulated spirits, reflecting the industry norms as to standard drink sizes. This means that in practice any bias is likely to be small. In any event, if a consumer feels they are short-changed by a venue, they have the option of shifting to the regulated spirits. There may be few consumers that would actually need 'protecting' by expanding the restriction to such drinks. And there may be some difficulties in developing a practical measure of volume for such spirits (eg their viscosity may make the use of simple manual measures unreliable, while the high sugar content of some of the other spirits and liqueurs will tend to clog the electronic measures normally used).

### 3.4 THE LABELLING AND MEASUREMENT OF PRE-PACKAGED GOODS

The trade measurement legislation imposes a general requirement for pre-packed goods to be marked by measure and for the packer to be identified on the package. The unit of measure must generally be that which the good is ordinarily sold by.

*Packaging can be misleading*

The packaging of goods provides substantial scope for marketing in such a way as to confuse or mislead consumers. It is a situation where information failure is a significant risk. Unlike non-packed produce, or produce that is not packaged, packaged products are not as readily available for inspection. All that can be inspected is the external package which may contain an internal package. In the absence of an objective measure, outer packaging becomes potentially more important. Its size may be the sole basis on which consumers can form a judgement as to the quantity contained in the package. In order to inspect products with both outer and inner packaging the consumer would need to open the outer package. This would of course be unacceptable to the seller and increase transactions costs.

*Marking the measure of a good can reduce this problem*

Arguably the package size is a poor basis on which to make a judgement. A more relevant basis is the measure of the good provided. While measure is clearly not a complete indicator of quality, it can be an important input to the consumer's decision-making.

*Suppliers have a strong incentive to mark their goods*

Many suppliers would probably seek to label their product with a measure and the name of the supplier/packer even in the absence of the requirements of the trade measurement legislation. Suppliers need to market their product if they are to sell, and this requires giving consumers information on the nature of their product. It is probably only the unscrupulous supplier that would seek to hide the nature of a good.

*The benefits of the restriction justify the cost*

There were no indications from consultation that the packaging requirements imposed an unreasonable burden on suppliers.<sup>9</sup> This is consistent with our expectation that most suppliers would choose to label their product with a measure and name of supplier/packer even in the absence of the requirements of the trade measurement legislation. The benefits of such labelling requirements are very likely to outweigh any costs imposed.

### 3.5 SPECIAL REQUIREMENTS FOR CERTAIN GOODS

*Some goods require special provisions*

Certain pre-packed goods are specifically mentioned in the trade measurement legislation. For example, pre-packed eggs must be sold by reference to the number in a pack and the minimum mass of each egg. Other goods subject to special provisions include pre-packed aluminium, paper in sheets, bedsheets and curtains.

In general these provisions are required to take account of the special characteristics of goods, and provide a more reliable measure than the number of grams, kilograms etc. Such provisions are generally justifiable because they are cheap and effective ways of communicating the nature of a product. As for most pre-packed goods, the provisions would in general only impose a cost on unscrupulous operators.

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<sup>9</sup> Note that consultation on this issue was brief, and there would be many thousands of relevant suppliers Australia-wide. More detailed consultation may change our assessment that the restriction is unlikely to impose costs.

*Some goods sold in certain sizes have an exemption from unit pricing*

A provision of note is the exemption provided from unit pricing (eg pricing by the kg) for certain goods such as fruit, vegetables, cheese and smallgoods sold in specified, non-rigid packages. For example, pre-packed fruit and vegetables sold in plastic bags packages weighing 15 g, 20 g, 25 g, 50 g, 75 g, 100 g, 125 g, 150 g, 200 g, 250g, 375 g, 500 g, 750 g, 1 kg, 1.25 kg, 1.5 kg, 2.5 kg or integral multiples of 1 kg need not be unit priced. The rationale for such an exemption is that consumers should be able to make reasonable value comparisons of these goods without unit pricing.

*The exemption from unit pricing may not be broad enough*

An issue is whether this exemption is broad enough. It could be argued that unit pricing need only be required when the specified goods are sold in random mass packs (ie each package can be a different weight). This is because of the extra difficulty of making price comparisons when each pack can be of a different weight.

It could also be argued that the exemption from unit pricing of non-rigid packages should be extended to more goods. Unit pricing may prevent some goods entering the market by placing an extra restriction on the method of sale. However, consultation did not provide any indication that unit pricing was of concern to suppliers. And there is a risk that a relaxation of the unit pricing provisions could disadvantage consumers by making it harder to compare the value for money offered by different products.<sup>10</sup>

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<sup>10</sup> The Queensland trade measurement section raised a technical issue that is not of concern to this review but nevertheless warrants attention. Schedule 1 of the Trade Measurement (Pre-Packed Articles) Regulation allows goods to be sold by each regardless of the package size (provided there are less than 9 items, the quantity is readily observable and all packages have the same quantity). This is a common practice, particularly in the sale of pre-packed fruit and vegetables (e.g. a string bag of avocados). But technically Schedule 1 is over-riden by the obligation defined in the body of the regulation to unit price unless packages are of a certain size (when interpreting legislation, a schedule to a regulation is of lesser standing to a section of the body of the regulation) Yet sale by each is routinely allowed and is sensible practice.

### 3.6 QUALITY STANDARDS

The trade measurement legislation imposes a general obligation on suppliers for measures to be accurate and to be presented truthfully and on the allowable forms of measurement. Theoretically this can impose costs if some buyers would prefer to buy their goods on another basis. For example, some buyers may prefer ‘rough and ready’ approaches to measurement rather than the standards set under the trade measurement legislation.

*Accurate and predictable measurement is critical to an economy*

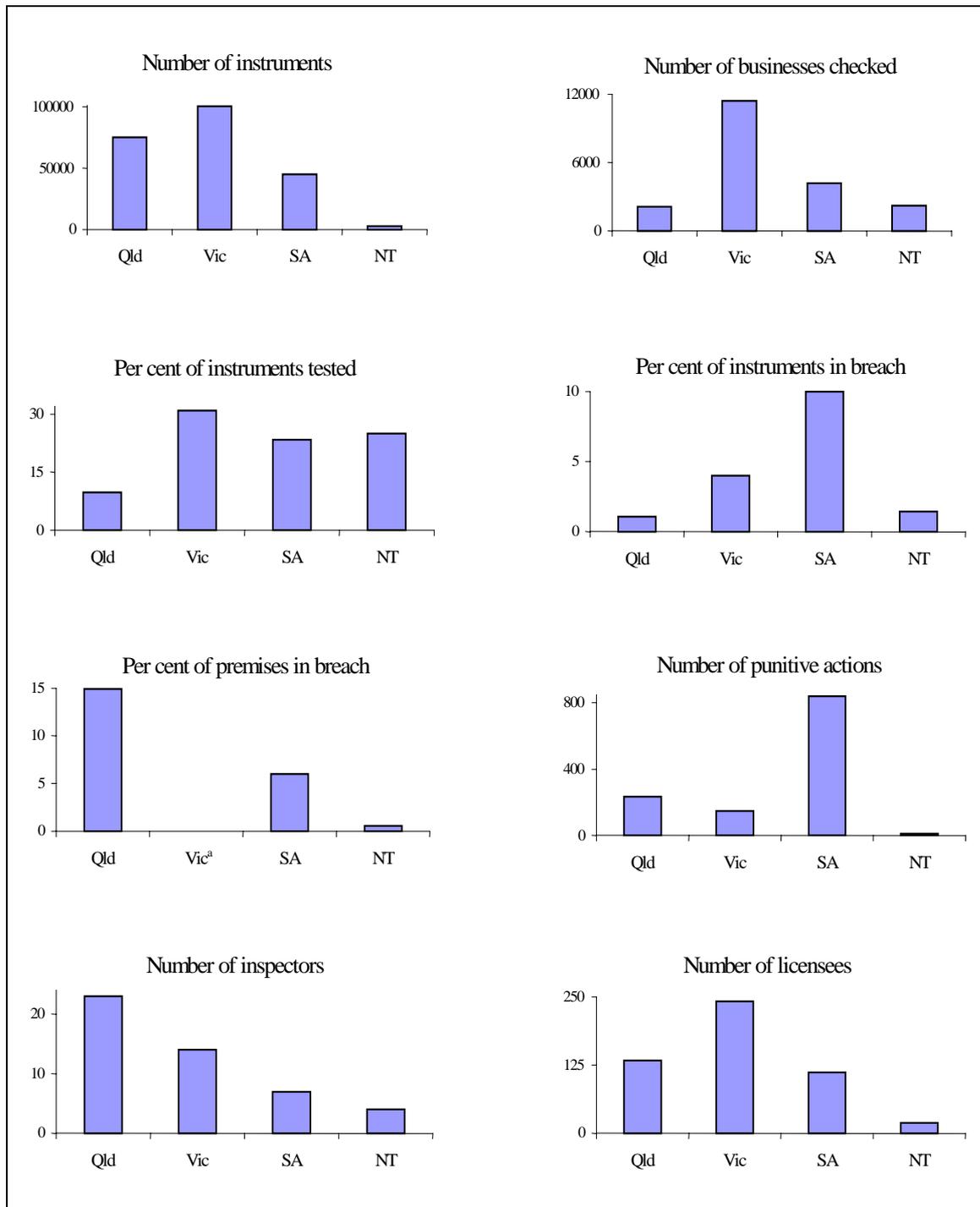
But this theoretical possibility is considered of little practical relevance. An accurate and predictable form of measurement can be seen as one of the fundamentals an economy requires to operate efficiently. Many millions of transactions are undertaken by measurement each year in Australia, and it is important that the transaction costs incurred are minimised. Basic quality standards in measurement are also essential to protect against dishonesty by unscrupulous operators.

One simple way to appreciate the need for basic quality standards is to observe the significant number and share of measuring instruments and premises found to be in breach of acceptable standards (see Box 3.1). Such breaches would be higher in the absence of basic quality standards.

*It is clear that the benefits would justify the costs*

The costs and benefits of basic minimum standards cannot be sensibly quantified as they are spread over such a large number of transactions. Nevertheless there is little doubt that the establishment of basic quality standards generates benefits that justify the costs.

BOX 3.2 TRADE MEASUREMENT STATISTICS FOR A SAMPLE OF STATES/TERRITORIES



NOTE: A. NOT AVAILABLE.

### 3.7 END-AND-END WEIGHING

*End-and-end weighing is prohibited on public weighbridges*

The Trade Measurement (Weighbridges) Regulation 1991 prohibits end-and-end weighing for trade purposes on public weighbridges. This is the practice whereby the weight of a vehicle is measured by adding the weight of the front part of the vehicle and the back part of a vehicle (where the weight of the each part is found by placing that part only on the weighbridge).

*End-and-end weighing is easy to manipulate*

End-and-end weighing can provide an accurate measure under certain circumstances. For example, the approaches to a weighbridge must be level, the truck must be still and there cannot be any residual pressures on the weighbridge from truck movement. However, it was argued by trade measurement officers and most industry representatives consulted that it is relatively easy to manipulate end-and-end weighing.

*It is allowed on private weighbridges*

An alternative to end-and-end weighing at a public weighbridge is to break-up a truck and weigh each trailer separately. However this is a time consuming process that in practice would generally rule it out. Buyers can also choose to end-and-end weigh at a private weighbridge (if certain conditions are met). While the measure provided does not have the independence in measurement offered by a measure from a public weighbridge, it may be sufficient for both buyer and seller.

*The prohibition creates problems in rural areas*

The main problem with the prohibition on end-and-end weighing appears to be in remote areas where sufficiently long weighbridges may not be readily available (this problem has increased over time as the allowable length of trucks has increased). Large trucks travelling to a major centre can probably find a suitable public weighbridge, although this increases the chance of the load being tampered with during transport (because the owner of the load could not measure it at the outset), and may mean the information is supplied too late (e.g.

to a truck operator concerned it may be over the allowable mass limits).

The lack of suitable public weighbridges in some areas was seen as a significant problem by some consulted. However, it appears unlikely to be a major problem.<sup>11</sup> Furthermore, the ease with which end-and-end weighing can be abused points to the value of the prohibition.

### 3.8 OBLIGATIONS ON LICENSEES

*Information failures can emerge in deregulated markets*

In economic terms one of the main potential justifications for a licensing system for instrument repairers is the correction of “information failures”. The owner of a measuring instrument may have difficulty in obtaining and assessing information about the competency of a provider of repair or maintenance services. In a completely deregulated market, there is a risk that instrument owners will place too much emphasis on price, and over time this can lead to the erosion of quality standards in the market (see Annex C).

But there are some reasons for believing that the risk of such an erosion in quality is low in this instance. The typical instrument owner would certainly lack the technical skills to assess the merits of the more sophisticated acts of instrument repair and maintenance. But they can observe the process of testing an instrument and assess if the scale correctly records the test mass placed on it. This means they have a ready test of the accuracy of work done. The main problem faced by the instrument owner would be in assessing whether the work required re-checking or correction too frequently. But even this may be somewhat examinable, for example by consulting other owners of measuring instruments or (for owners of a large number of instruments) using the services of more than one licensee.

Given these possibilities, in a completely deregulated market low quality service providers would tend to find it hard to obtain and maintain those clients that emphasise quality. This suggests that quality standards may be preserved even in a deregulated market.

*Licensing is required to protect against dishonesty*

But this argument presumes that an instrument owner is actually seeking a quality service. Providing customers find it hard to verify weights, which is the typical case, dishonest suppliers will have a tendency to manipulate their scales. The licensing system helps prevent this by ensuring that all measuring instruments must have the mark of a licensee or inspector and providing for checks on the work of licensees. In this way the interests of both consumers and honest businesses are protected.

*The costs imposed by the licence system are low*

It is important to appreciate that the cost of the licensing system is low. Licensing systems can impose costs when they deter or prevent the entry of potential suppliers. They may allow certain groups to exclude others, perhaps because of a difference in approach or educational background. Preventing entry may reduce competitive pressures in the provision of services, where this can be expected to raise prices compared to the situation seen in a more competitive market. However, there are few barriers to obtaining a license. In one sense it could be argued the system is too lenient as no skill requirements are specified.<sup>12</sup> Further, the financial cost of obtaining a licence is small (in Queensland the license fee is \$50 per year).

Given the reliance on accurate measuring instruments throughout the economy in many millions of transactions per year, the benefits generated by the licensing system would be significant. It is

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<sup>11</sup> If it was, there would be a commercial incentive for public weighbridges to emerge or be modified to deal with the larger trucks (the cost of purchasing and installing a large weighbridge is understood to be less than \$100,000, with the cost of employing an operator and maintenance being the main operating costs).

<sup>12</sup> Note that much of the training can be provided quickly on-the-job, and that licensees are probably able to tailor a task to the skill level of the operator. Furthermore, the ability for inspectors to readily audit the work of licensees is a sensible way of checking and maintaining quality standards of licensees.

reasonable to expect the benefits of the licensing system to exceed the minor costs imposed.

*Licensing is a sensible, low cost safeguard*

On balance, we see the licensing system as a sensible, low cost safeguard. It will help prevent the emergence of information failures and perhaps more importantly help prevent the abuse of measuring instruments. In this way the licensing system satisfies the objectives of the legislation — it builds the efficiency of the trade measurement industry, promotes commercial certainty and protects consumer interests. In contrast there is a significant risk that the non-legislative alternative may not meet this objective.

### 3.9 THE OPERATION OF PUBLIC WEIGHBRIDGES

There are approximately 800 weighbridges in Queensland, around 160 of which operate as public weighbridges and are available for third party measurement.

*Public weighbridges are used throughout industry*

There are many areas of industry that require accurate measurements of the weight of vehicles. These include sellers and buyers of bulk products and truck operators that need to ensure their weight is within regulated limits. In the absence of a system of public weighbridges, businesses would need to independently review the accuracy of weighbridges used by suppliers to be confident in the quality of measurements provided.

*Buyers could incur significant costs if there were no weighbridges*

The potential result is that firms could bear significant transaction costs in verifying the accuracy of weights. Consider the case where the nature of the product is such that the buyer requires an independent verification of the weight (eg because the good has a high unit value). If independent verification of an individual supplier's load is not possible at a reasonable cost, the buyer may not be prepared to purchase from the supplier. In the extreme some suppliers could be excluded from actively competing in the market. These effects would impede the efficiency of the economy. With

many users of weighbridges operating in export markets (e.g. grain, copper and cotton), the international competitiveness of the economy would be reduced and this would reduce growth prospects over time.

Thus there can be a clear rationale for government intervention to set and enforce minimum standards. By overcoming the market failure resulting from information failure, there would be an improvement in the efficiency of the economy. The benefits could be substantial given the widespread use of weighbridges, particularly in export industries.

One of the potential costs of the restriction is that it may create a barrier to entry if alternative weighbridges cannot meet the required quality standards. This is more likely to be a problem if the minimum standards require regular updating to allow for technological change, such that firms wishing to adopt new technology may be disadvantaged. However, most operators or users of weighbridges consulted argued that the quality standard required of public and private weighbridges under the trade measurement system are largely equivalent. This suggests that there are generally few barriers to becoming a public weighbridge.<sup>13</sup>

*Costs imposed  
are small*

Public weighbridges are exposed to more scrutiny by inspectors and require more administration. Discussions with weighbridge operators suggested the extra cost borne by operating as a public weighbridge is in the range of \$1,000 to \$2,500 per annum. This cost covers the cost of an inspection every one or two years, an annual licence and certificate of suitability of \$50 each and the cost of extra stationery and record keeping. These costs can be seen as the main cost imposed by the public weighbridge system.

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<sup>13</sup> There are some weighbridges that would be unsuitable. For example, those that can only undertake end-and-end weighing or are unsafe for public access (e.g. are located in a quarry).

Some illustrative estimates have been prepared of the potential benefits of the public weighbridge system to test if such costs are justified.

Assuming a hypothetical case in which the system of certifying public weighbridges is removed, our expectation is that quality standards would be maintained for a large share of the weighbridges that continue to weigh third party transactions. Weighbridges may only charge \$10 to \$20 per weigh, but the value of each load weighed is normally in the thousands. Errors in weighing can quickly add up. Even if all trade measurement legislation was removed, weighbridges would have a legal responsibility to provide accurate measures. The risk of being sued for losses incurred by incorrect measures leads us to expect that quality standards would remain high for those weighbridges open to third parties.

We anticipate that the main impact of removing the system of public weighbridges would be that some buyers would require loads to be measured by weighbridges independent of the supplier. This may present few problems when independent weighbridges are readily available, such as around a port or in urban areas, or when the independent weighbridge is on the typical route. But in some cases trucks would be required to undertake extra trips in order to verify weights. Our investigations reveal there is a potential for significant problems in some rural areas. Consider the following illustrative cases based on actual situations.

Case A      A quarry in central Queensland weighs approximately 30,000 loads of its own material per year. The nearest independent weighbridge is 25 km away. Assume that 5 per cent of its customers required independent weighing, and they were in the opposite direction to the

independent weighbridge. The extra trucking costs would be in the order of \$50,000 per annum.<sup>14</sup>

Case B A cotton exporter in western Queensland weighs approximately 5,500 loads of its own material per year. The nearest independent weighbridge is 110 km away and is out of the way. Assume that 5 per cent of its customers required independent weighing. The extra trucking costs would be in the order of \$40,000 per annum.

Case C A gravel supplier on the NSW central coast weighs approximately 600 loads of its own material per year. The nearest independent weighbridge is 20 km away. If 5 per cent of its customers required independent weighing and were in the opposite direction to the independent weighbridge, the extra trucking costs would be in the order of \$1,000 per annum. The second alternative is 160 km away. If 5 per cent of its loads were sent there, the extra trucking cost would be \$6,000.

Our conclusion is that the cost savings from a system of public weighbridges can be substantial, and this supports our in-principle expectation that the system is desirable. The system is a sensible way to establish the accuracy of weighbridges and the benefits of market facilitation are likely to outweigh any costs imposed by the restriction on competition.

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<sup>14</sup> Based on estimates of the cost of truck transport supplied by Queensland Main Roads Department.

## 4 AN ASSESSMENT OF THE OPTIONS

*We consider three options*

A PBT is required to compare a ‘without change’ state to one in which the restrictions on competition are removed.<sup>15</sup> For this study we see it as sensible to define two ‘with change’ states, one in which all trade measurement legislation is removed and one in which only some restrictions are removed. The three options evaluated are as follows —

□ *Current legislation*

*A no change case*

Legislation would continue to define quality standards and when they apply. Key regulatory restrictions are restrictions on the method of sale, the use of measures and measuring instruments and restrictions on private sector service providers.

□ *Minimalist legislation*

*One where legislation would enforce basic standards only*

Legislation would establish basic standards but not specify how or when they are to apply. For example, legislation would define acceptable forms of measurement, an acceptable level of accuracy of a measuring instrument and enforce a licensing system. But it would not place any restrictions on the method of sale or how measures are to be used. The general protection for business and consumers provided by the Fair Trading Acts, the Trade Practices Act and common law obligations would apply to ensure the fair representation of any measures.

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<sup>15</sup> A PBT is intended to assess whether existing restrictions on competition should be retained, and therefore the appropriate comparison is with the existing restriction and a less restrictive state. A PBT is not normally used to assess which of a possible range of restrictions on competition provide the highest net benefit, although such an assessment can of course be worthwhile.

□ *Complete deregulation*

*And a case where all trade measurement legislation is repealed*

All trade measurement legislation would be repealed. The general protection for business and consumers provided by the Fair Trading Acts, the Trade Practices Act and common law obligations would be the only means of enforcing the fair representation of measures.

The key differences between the three scenarios are summarised in Table 4.1. To a large extent the adoption of the uniform trade measurement legislation through the 1990s has seen minimalist legislation put in place. The main areas where it goes beyond a minimalist approach are in the sale of meat and the labelling and measurement of pre-packaged goods.

TABLE 4.1 SUMMARY OF THE OPTIONS

RESTRICTION ON COMPETITION	PROVIDED FOR BY THE TRADE MEASUREMENT LEGISLATION		
	CURRENT LEGISLATION	MINIMALIST LEGISLATION	COMPLETE DEREGULATION
<b>A RESTRICTIONS ON THE METHOD OF SALE</b>			
A1 Restrictions on meat	yes	<b>X</b>	<b>X</b>
A2 Restrictions on spirits and beer	yes	yes	<b>X</b>
A3 Labelling and measurement of pre-packaged goods	yes	<b>X</b>	<b>X</b>
A4 Labelling and packaging requirements for certain articles (e.g. some pre-packed food, eggs, bedsheets)	yes	<b>X</b>	<b>X</b>
<b>B RESTRICTIONS ON THE USE OF MEASURES AND MEASURING INSTRUMENTS</b>			
B1 The oversight of measurement instruments	yes	yes	<b>X</b>
B2 The prohibition on end-and-end weighing	yes	yes	<b>X</b>
<b>C RESTRICTIONS ON PRIVATE SECTOR SERVICE PROVIDERS</b>			
C1 The licensing of service organisations	yes	yes	<b>X</b>
C2 The licensing of public weighbridges	yes	yes	<b>X</b>

We see little value in the repeal of all trade measurement legislation. Under this option buyer protection would be provided for by the *Fair*

*Trading Act, Trade Practices Act* and the common law. But a void would be created in terms of providing objective means of establishing measures to the satisfaction of the courts. In effect a replacement to the legislation would have to emerge. Furthermore, the cost and complexity of the system would probably be increased, especially if proceedings were taken at common law, further increasing pressure on the court system.

Those existing provisions consistent with a minimalist approach are considered to be justifiable. In this respect the provisions of note are the oversight of measurement standards, the restrictions on the sale of spirits and beer, the prohibition of end-and-end weighing at public weighbridges and the licensing of service organisations and public weighbridges. These provisions both meet the objectives of the legislation (whereas less restrictive alternatives probably would not) and can be expected to generate benefits that exceed costs.

However, it could be argued that the provisions relating to the sale of meat by each and on the unit pricing of pre-packed goods sold in non-rigid containers may be too restrictive. While these provisions would benefit some consumers, they have the potential to disadvantage other consumers and may disadvantage some producers. Based on the research to-date, it is unclear whether the objectives of the legislation can only be met by restricting competition and whether the benefits of the restriction outweigh the costs. The restriction on the sale of meat is the main provision of concern.

## 5 THE NEXT STEPS

The assessment prepared for this scoping study points to the restrictions on the competition in the trade measurement falling into two categories —

- those that appear to provide net benefits on the basis of economic principle and the consultation to date. In this case it appears unlikely that the objectives could be achieved without anti-competitive legislation and there is no overt concern about or opposition to the restrictions.
- those that could not be shown based on the research to-date to generate benefits that outweigh the costs. In this case further research and consultation is required if the restrictions are to be retained.

*Most restrictions do not warrant further investigation*

Most restrictions fall into the first category and do not require further investigation. But the restrictions on the sale of meat and on the unit pricing of pre-packed goods sold in non-rigid containers fall into the second category. Our assessment is that further work is required before a case could be made to retain the restrictions on competition. There is a reasonable case for removing such restrictions and, if this assessment is accepted and acted upon, further investigation is unnecessary. If the Review Committee considered it desirable to retain such restrictions, a more detailed PBT would be required of these restrictions only.<sup>16</sup> We anticipate that such a PBT would be a national one that considered all jurisdictions given the potential for differences between jurisdictions (particularly with respect to meat).

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<sup>16</sup> The 'rules' governing the conduct of PBTs are discussed in Annex D.

*If a PBT is required, a consumer survey is essential*

The provisions regarding the sale of meat are the key concern. From an analytical perspective a key requirement for further work on the issue would be a survey of consumers. Some consumers lose from the current restrictions (e.g. those that would prefer to buy meat by each and are denied certain products) while others gain (i.e. those that find that comparisons between retailers are assisted by the pricing of meat by the kilogram). It would be important to explore whether the benefits are likely to outweigh the costs. This would probably require quantification of the impacts.

The design and implementation of surveys that provide an acceptable level of statistical accuracy requires specialist expertise and techniques. A key requirement for acceptable statistical accuracy is a significant sample size. In this case we suggest that a sensible survey could be designed to provide representative results for Australia based on at least one region. There are advantages in conducting such a survey in Queensland as the familiarity with the sale of chicken and fish by each should make for more considered responses. A suitable region would be the South-East Queensland corner of the State. This would probably require a sample of about 600. We have been advised by an independent firm specialising in surveys that a suitable survey would cost in the order of \$60,000 per region. While a survey of one region should be sufficient for sensible conclusions to be drawn, the Review Committee may wish to consider surveying other regions.

*Intensive interviews with some suppliers would be desirable*

Further analysis of the restrictions on meat would also require an examination of the costs imposed on suppliers/packers by the current restrictions. In the case of non-packed meat, the extent to which supermarkets and grocery stores are advantaged over other retailers and the extent to which chicken and fish are advantaged over red meat in Queensland would provide instructive areas of investigation. However, based on the consultation conducted to date we do not expect that it would be possible to quantify the potential costs and

benefits via a survey of producers. Instead, intensive interviews with selected industry participants would be highly desirable to quantify potential impacts (along the lines of the examination of public weighbridge operators presented above).

With respect to the unit pricing of pre-packed goods sold in non-rigid containers, a survey could be conducted of consumers as outlined above. But our expectation is that any future work should place most emphasis on the supplier perspective through targeted interviews. The aim of such interviews would be to assess whether the provisions do impose costs on suppliers. It is likely that a relaxation of the restrictions would only be warranted if there are significant costs.

A consultation program undertaken as part of a PBT should also aim to ensure that —

- the community was aware that the review was being conducted and had an opportunity to contribute to it.
- no significant information or views were overlooked in the review.
- the community could be assured that the outcome of the review reflected a process which took account of community views.

It would be important for consultation to be informed by the preparation of an issues paper, where separate issues papers could be prepared for each restriction. This could be disseminated to those on consultation lists already prepared by each jurisdiction, placed on government web-sites and flagged in media advertising which invites responses. It would need to present a reasonably detailed exposition of the issues, explain the alternatives and their potential costs and benefits and request submissions.

Consultation would be assisted by direct consultation of consumer groups and key industry participants. In some cases interviews would

*An issues paper  
would be  
required*

probably be desirable (by phone or face-to-face) after consideration of responses and firming-up preferred options. We do not see a need to conduct public hearings given the relatively minor nature of the restrictions.

The estimated cost of key components of a PBT based on what we consider is a reasonable level of research are presented in Table 5.1. Given the relative importance of the restrictions on meat, we see work on this issue as costing more than a review of the unit pricing of pre-packaged goods. The total cost could vary substantially if the Review Committee considered more or less research was required.

In the extreme the cost of a PBT would be avoided altogether if the provisions restricting competition were relaxed. We consider that a reasonable case could be made for such an approach.

TABLE 5.1 ESTIMATED COST OF A TARGETED PBT

	EXAMINATION OF THE RESTRICTIONS ON MEAT	EXAMINATION OF THE UNIT PRICING OF PRE-PACKAGED GOODS	TOTAL PBT
Preparation of an issues paper	10,000	5,000	15,000
Consumer survey <sup>a</sup>	60,000	60,000	120,000
Targeted interviews with industry	40,000	20,000	60,000
Analysis and documentation of survey results and interviews	10,000	5,000	15,000
Report preparation	10,000	5,000	15,000
General co-ordination and meetings	5,000	3,000	8,000
Total	135,000	98,000	233,000

a based on a survey of one region only.  
Note Advertising and travel costs are not included

## 6 CONCLUSION

*Most restrictions on competition are justifiable*

Our main conclusion is that the trade measurement restrictions on competition are generally justifiable. Most impose few if any costs while potentially generating widespread and significant benefits. These restrictions include the oversight of measurement standards, the prohibition of end-and-end weighing at public weighbridges and the licensing of service organisations and public weighbridges.

The net benefit of such restrictions has been difficult to calculate. Nevertheless the indicative estimates prepared in assessing public weighbridges are seen to be representative of the potential for significant gains from enforcing an accurate and predictable system of measurement in the economy. There seems little to be gained by further investigation of these restrictions.

*This includes most restrictions on pre-packed goods*

The general obligation for pre-packed goods to display their weight, unit price (e.g. price per kg) and the supplier/packer is also reasonable. Again it is very likely that any costs that are imposed are outweighed by the benefits. Further investigation may provide further insights into the costs and benefits, but it is very unlikely that a sound case would emerge for their removal.

*And on beer and spirits*

At first glance the restrictions on the sale of spirits and beer appear to have a significant impact on competition, particularly in terms of competition with wine and between different liquor outlets. But further investigation has revealed that the restrictions have little if any adverse impact on competition but provide benefits to consumers. These restrictions are justifiable.

*The restrictions on the sale of meat cannot be justified at this stage*

The case for retaining the restriction on the sale of non-packed meat is harder to make. The prohibition of the sale of non-packed meat by each appears to be against the interests of producers and some consumers. But it is possible that some consumers may be worse off if the restrictions were removed. This is an area that may justify further investigation.

The requirements regarding the unit pricing of pre-packed goods also warrants further investigation.

*A detailed PBT would be required if the restrictions on meat and the unit pricing of pre-packed goods are to be maintained*

Should the Review Committee wish to further explore the case for maintaining the restrictions on meat and the unit pricing of pre-packed goods, a PBT would be required. This could cost in the order of \$200,000, with a significant share of the costs arising from the need for detailed surveys of consumer attitudes. In our view, the restrictions on the sale of meat could only be maintained if it could be demonstrated from a survey that the potential gains to some consumers outweighed the costs to other consumers and to producers. A survey of consumer attitudes is also desirable in examining the unit pricing of pre-packed goods, but is not essential. Targeted interviews with suppliers are important in both cases if a rigorous case is to be made.

In summary, our key recommendations are that —

- No further investigation is required of most of the restrictions to competition in the Trade Measurement legislation. These restrictions include the oversight of measurement standards, the prohibition of end-and-end weighing at public weighbridges and the licensing of service organisations and public weighbridges.
- A detailed PBT would be required if the Review Committee wishes to maintain the current restrictions on the sale of meat and the unit pricing of pre-packed goods.

## ANNEX A TRADE MEASUREMENT IN PRACTICE

*This annex describes the activities of a trade measurement agency using Queensland as an example. It also outlines the key provisions of the trade measurement and consumer protection legislation of relevance to this review and the proposed amendments to the trade measurement legislation as developed by TMAC.*

### A.1 THE ACTIVITIES OF THE QUEENSLAND TRADE MEASUREMENT SECTION<sup>17</sup>

#### THE TRADE MEASUREMENT SECTION

The Trade Measurement Officers of the Office of Fair Trading are responsible for implementation of the State's trade measurement legislation and aspects of the Fair Trading Act. Duties include —

- Ensuring the accuracy of a wide range of weighing and measuring equipment used for trade. For example: scales in a corner shop; industrial weighbridges; petrol pumps; aircraft refuelling equipment; liquor measuring instruments; and beam scales used by pharmacists and jewellers.
- Undertaking inspections in the marketplace to ensure that consumers receive correct quantity. This includes checking the weight of pre-packed goods and making trial purchases.
- Licensing service organisations who repair weighing and measuring equipment.
- Licensing operators of public weighbridges.

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<sup>17</sup> The material in this section has been supplied by the Queensland Office of Fair Trading.

- Checking supermarket price-scanning systems to ensure that consumers are charged correct prices.
- Conducting field inspections on behalf of the Consumer Safety Section.

#### THE MEASUREMENT LABORATORY

The Measurement Laboratory's main functions are —

- To test, calibrate and verify standards of measurement and test equipment used by Trade Measurement Officers in their routine duties.
- To provide a testing, calibration and verification service for Government Departments which enforce legislation and require accurate standards of measurement (i.e. fish & crab gauges, equipment to test police radar).
- To provide a service to trade, industry and commerce organisations which require accurate standards of measurement.
- To provide services for regulation and non-regulation purposes, quality assurance, gaming and sporting equipment (i.e. Lotto balls, equipment required for athletic events).

#### SCALES

There are more than 20,000 retail scales and over 6,000 scales of larger capacity in use for trade in Queensland. These range from scales in corner shops to scales in large supermarkets and factories. Each of these instruments is required to be tested and certified by a Trade Measurement Officer or Servicing Licensee to ensure that it is accurate and complies with its design rules.

#### WEIGHBRIDGES

Queensland has approximately 1,000 weighbridges, around 160 of which operate as public weighbridges (i.e. are available for use by third parties). Weighbridge testing is dependent upon a number of factors, such as their previous history, use and when they were last tested. The Department's dedicated weighbridge testing unit carries 21 tonne-block weights and two 500 kg-block weights. Weighbridges ranging from 3 tonne to 120 tonne require the use of additional weight, usually in the form of trucks or forklifts used at the weighbridge site.

## LIQUOR MEASURING INSTRUMENTS

Legislation requires beer, stout, ale, gin, rum, whisky (including whiskey), vodka and brandy (including Cognac and Armagnac) to be sold by reference to quantity. Spirits are measured by means of either ‘thimble’ measures or wall mounted measuring instruments. Draught beer is measured using beer glasses. Inspections of licensed premises involve checks on the accuracy of spirit measuring instruments and the correct marking of all measuring instruments including beer glasses. Routine trial purchases are made by Officers to check that the measures are being used correctly and that consumers receive the correct quantity.

## PACKAGING CHECKS

Pre-packed goods offered for sale are required to be marked with specific information relating to the quantity they contain and the name of the person or company who packed them. Trade Measurement Officers routinely carry out packaging inspections to ensure that pre-packed goods comply with these requirements. Depending upon the individual circumstances, packages are check-weighed in-store using portable weighing instruments or traders’ weighing or measuring instruments, or when required are weighed at the Packaging Laboratory. Articles check-weighed or measured by Officers in the Packaging Laboratory are weighed under controlled conditions. The accuracy of the results is very important as these results may be used as evidence for Infringement reports or for prosecutions in the courts.

## SCANNING

Trade Measurement Officers include scanning checks as part of their routine inspections of supermarkets. Scanning checks involve selecting a number of items and ensuring that their prices scan correctly. Overcharging is a breach of the Fair Trading Act 1999, which is enforced by the Trade Measurement Section.

## LICENSING

Owners of trade measuring instruments have the responsibility to ensure that their instruments are accurate and are used correctly. The Trade Measurement Section operates a priority based spot inspection program to monitor compliance, but it is not always sufficient for owners to rely solely on these spot checks for ensuring that accuracy.

The Queensland Trade Measurement Act 1990 contains provisions that allow for the licensing of servicing organisations to check, repair and certify trade measuring instruments. There are currently more than 140 servicing licensees and 600 certifiers licensed by the Trade Measurement Section.

The licensing provisions have particular benefits for owners of trade measuring instruments, namely —

- The ability to have new measuring instruments certified for immediate use in the marketplace without requiring the attendance of a Trade Measurement Officer.
- The ability to have measuring instruments certified in the field after they have been repaired without requiring the attendance of a Trade Measurement Officer.
- Considerable cost and time savings to licensees and their clients as a consequence of the above.
- The acceptance throughout all States and Territories of portable measuring instruments certified in any State or Territory.

Certifiers are not required to take a formal examination, however, licensees are responsible for ensuring that the persons they nominate as certifiers are competent, properly trained and are fully aware of legislative requirements relating to the testing and certification of measuring instruments.

Trade Measurement officers conduct auditing programs on the performance of servicing licensees and their employees (certifiers). These programs consist of monitoring the compliance of actual instruments that have been certified and the certification forms that are subsequently issued.

The Trade Measurement Section also issues licences to operate public weighbridges. These are renewable on an annual basis. There are in excess of one hundred licenses for operating public weighbridges and in excess of 940 operators authorised to operate these weighbridges. Licensees are responsible for ensuring that their authorised operators are competent in the operations of a public weighbridge.

Public weighbridges allow the public access to weighing facilities that would not otherwise be available. They are generally used for —

- Buying and selling goods.
- Establishing the weight of a vehicle for registration purposes.
- Ensuring that vehicles are not overloaded.

The legislation that controls the operation of public weighbridges allows the operator to charge a fee for the service provided.

## A.2 KEY PROVISIONS OF THE TRADE MEASUREMENT LEGISLATION<sup>18</sup>

### TRADE MEASUREMENT ACT 1990

Sections 7 to 9 create a general obligation for measuring instruments used in trade (including weighbridges) to be certified and to be used correctly.

Sections 10 to 21 define processes for the verification, re-verification and certification of measuring instruments by government inspectors and authorised licensees. Individuals have a choice as to whether they use an inspector for verification or a licensed person for certification. In this sense, the certification by licensees is a substitute for verification and re-verification by inspectors. The Trade Measurement (Administration) Regulation (which is outside the scope of this review) specifies the fees to be charged by inspectors for providing various services.

Section 13 specifies that the appropriate standards of accuracy are as defined by the National Measurement Act.

Section 24 imposes a general requirement that sales by weight must be accurate, and either goods are weighed in the presence of the buyer or a written statement is provided of measurement. The seller of any good sold at a price determined by weight must not directly or indirectly mislead the buyer as to the calculation of price and must ensure that the price is correctly calculated. Section 24 specifies that the quantity of an article sold cannot be less than that offered to the buyer.

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<sup>18</sup> This section is not necessarily comprehensive or intended to present a strict interpretation of the legislation.

Section 25 specifies that meat must be sold by mass, with the price per kilogram to be prominently displayed. This means that meat cannot be sold by 'each' or by portion. This provision does not apply to rabbit, the heads or internal organs of an animal, pre-packed meat or cooked meat sold on the premises on which it is cooked. In practice a key issue is when processed or 'value-added' meat ceases to be considered meat, and can be sold by each. The provision has been interpreted differently in Queensland from other states, with Queensland interpreting meat as excluding fish and chicken.

Section 26 provides a general power for regulations to specify non-pre-packed goods that must be sold as a certain quantity.

Sections 28 to 37 relate to pre-packaged goods. Section 28 provides for regulations to set standards applying to pre-packaged goods (these standards are set within the Trade Measurement (Pre-Packed Articles) Regulation). A general obligation to correctly price and weigh pre-packed goods is imposed by Sections 31 and 32. Methods of determining what constitutes a short measure, defences for sellers and employees and an ability for the administering authority to issue exemptions are also provided for.

Sections 42 to 59 specify the system for licensing weighbridges and approved service agents for measuring instruments. Under Section 43, a person who makes available a weighbridge as a public weighbridge is required to hold a public weighbridge license. A public weighbridge is defined under the Act as a weighbridge that is open for use by or on behalf of the public or for the use of which a charge is made (private weighbridges are operated by either the suppliers or buyers of materials for their own use). There are no limits on the number of public weighbridges and non-public weighbridges that can be licensed provided that they comply with the requirements of the legislation. The license fees are relatively small (\$50). A weighbridge can only be operated if it has been certified and public weighbridges can only be operated by a licensee or their employee.

Basic grounds for refusing to license a service agent include age, previous dishonesty and general unsuitability. There are no specific skill requirements for licensees or their employees. The Act allows for the setting of conditions on licensees as appropriate.

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**TRADE MEASUREMENT (MISCELLANEOUS) REGULATION 1991**

Section 4 specifies that beer, stout, ale and certain spirits (i.e. brandy, gin, rum, vodka and whisky) must be sold by volume. This has the effect that beer sold by the glass must be sold in a glass marked with its volume. The National Standards Commission has only certified measuring instruments for spirits in 15 ml, 30 ml and 60 ml sizes (although technically they could verify any volume), so the specified spirits must be sold in these units.

Section 5 specifies the unit of measurement that should be used in selling non pre-packed goods by reference to measurement. The main provisions are an obligation that when setting prices by reference to mass, to do so by reference to a kilogram or an integral number of kilograms or tonnes; to volume, to do so by reference to a litre or an integral number of litres or cubic metres; to linear measurements, to do so by reference to a centimetre, metre or integral number of metres; to superficial measurement, to do so by reference to square centimetre, square metre or integral number of square metres.

**TRADE MEASUREMENT (PRE-PACKED ARTICLES) REGULATION 1991**

Sections 9 and 17 specify a general requirement to mark the name and address of the person that packed a pre-packed article and the measurement of the good, and specifies the appropriate position and set-out of the marking (e.g. the size of text and the position of a label relative to the edge of the package). The unit of measurement must generally be that by which the good is ordinarily sold (e.g. if a good is ordinarily sold by number, the measurement must be by reference to number, or if a good is ordinarily sold as a liquid, the measurement must be by reference to volume).

Section 18 specifies that some goods may be sold by minimum weight provided specified information is provided. For example, chickens are normally sold by size, where this conforms to a minimum size (i.e. a size 16 chicken is at least 1.6 kg).

Sections 19 to 23 specify conditions of sale for specific commodities. In particular —

- ❑ Eggs must be sold by reference to the number in a pack and the minimum mass of each egg.
- ❑ Pre-packed aluminum foil, facial tissues, toilet paper and waxed paper do not require a measurement marking if the number of sheets of a specified dimension are shown.

- ❑ Bedsheets, tarpaulins and mattress protectors must be marked in terms of the finished item and bedsheets and mattress protectors must be marked as length × width × depth.
- ❑ Special provisions are made for articles normally sold by tonne (e.g. cement).
- ❑ The maximum width and drop of window curtains must be marked.

In general, pre-packed items must be sold by measurement and must be marked with the unit price (eg the price per kilo) either on the package or at the point of sale. However, Section 28 lists certain pre-packed goods that need not be unit priced when sold in packages of prescribed sizes. The goods include pre-packed fruit, dried fruit, cheese and cheese products, some dressed poultry, fish, mushrooms, vegetables, meat and smallgoods (see Table A.1). These provisions only apply when the package is not a rigid container.

TABLE A.1 PACKAGE SIZES EXEMPT FROM UNIT PRICING FOR CERTAIN GOODS

GOOD	SIZE RESTRICTION
Cheese and cheese products	100 g, 125 g, 200 g, 250 g, 375 g, 500 g, 750 g, 1 kg integral multiples of 500 g
Dressed poultry and meat	100 g, 125 g, 200 g, 250 g, 500 g, 1 kg integral multiples of 1 kg
Dried fruit, dehydrated fruit, dried or dehydrated mixed fruit	100 g, 125 g, 150 g, 200 g, 250 g, 375 g, 500 g, 750 g, 1 kg, 1.5 kg integral multiples of 1 kg
Fruit, fish (including crustaceans), mushrooms and vegetables	15 g, 20 g, 25 g, 50 g, 75 g, 100 g, 125 g, 150 g, 200 g, 250 g, 375 g, 500 g, 750 g, 1 kg, 1.25 kg, 1.5 kg, 2.5 kg integral multiples of 1 kg
Smallgoods (including bacon, corned beef and ham)	50 g, 125 g, 175 g, 250 g, 375 g, 500 g integral multiples of 500 g

Source: Section 28 of the Trade Measurement (Pre-Packed Articles) Regulations 1991

Sections 29 to 32 prohibit the use of certain expressions for some goods, such as ‘mass when packed’, ‘mass at standard condition’ and ‘gross mass’.

Sections 33 to 39 specify methods for measuring the size of selected goods, such as required to test for the presence of short measures.

Schedule 1 provides exemptions from marking for certain goods. These goods include textiles, certain foods (e.g. pies, pasties, single chocolate Easter eggs, confectionary packed on the premises), medicinal and toilet goods, hardware goods, goods normally sold in a

quantity less than 9 provided the quantity is readily observable (e.g. bags of avocados), clay, candles and garden landscape materials.<sup>19</sup>

Schedule 2 specifies the permissible form of measurement for certain goods. For example, ice cream must be sold by volume and LPG must be sold by mass.

Schedule 3 of the Act specifies permissible units of measurement for pre-packed goods. Kilograms, litres and metres are permissible measures, where smaller measures are suitable for goods weighing less than a kilogram, etc. For example, goods can be sold by the gram if the mass is less than 1,000 grams.

#### TRADE MEASUREMENT (WEIGHBRIDGES) REGULATION 1991

Sections 15 to 20 provide for the provision of certificates of suitability to public weighbridges (the fee for obtaining a certificate of suitability licence is set under the Trade Measurement Administration Regulations at \$50).

Sections 21 to 28 specify the duties of a public weighbridge operator. The duties comprise keeping the weighbridge balanced, clean and free of obstruction, not refusing to provide the service except in specified circumstances, exercising due care in determining measurements, exercising due care in record-keeping, the production of records, and informing the administering authority and withdrawing the weighbridge from service if the licensee knows or has reason to believe that the weighbridge provides incorrect measurements.

The regulation generally does not prescribe the equipment to be used. Instead it prescribes the required features and information that should be available from the use of the equipment. For example, controls provided for under Sections 5 to 14 include those relating to the position of a weighbridge, visibility, approaches and the material used as platforms.

Section 29 prohibits end-and-end weighing for trade purposes on public weighbridges. This is the practice whereby the weight of a vehicle is measured by adding the weight of the front part of the vehicle and the back part of a vehicle (where the weight of the each part is found

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<sup>19</sup> Note that the provision allowing sale by each under Schedule 1 technically does not override Section 28. This means that, technically, packed fruit and vegetables cannot be sold by each, they can only be sold in the package sizes specified in the table of Section 28. However, in practice sale by each is allowed, at least in Queensland.

by placing that part only on the weighbridge). This implies that weighbridges that can only be used for end-and-end weighing cannot be certified as suitable as a public weighbridge.

End-and-end weighing is permitted on private weighbridges under Section 30 provided certain conditions are met. These relate to the wheelbase of the vehicles, approaches to and surface of the weighbridge, the perimeter of the approaches and the location of the vehicle, along with requirements to disengage the brakes, gears and any other means capable of restricting movement.

#### TRADE MEASUREMENT (MEASURING INSTRUMENTS) REGULATION 1991

These regulations are designed to ensure the integrity of measuring instruments and in the use of measuring instruments. The regulations impose detailed restrictions on the testing, verification and use of measuring instruments and impose duties on licensees. For example, Section 23 limits the use of liquid measuring instruments to only those liquids for which the approved pattern relates (approved patterns are set under Commonwealth legislation by the National Standards Commission).

#### TRADE MEASUREMENT AMENDMENT ACT 1999 AND TRADE MEASUREMENT AMENDMENT REGULATION (NO.1) 1999

These amendments provide for a number of minor refinements to the Trade Measurement Act and its regulations. There are no changes of significance for this review.

#### TMAC PROPOSED AMENDMENTS

TMAC has proposed a number of amendments to the trade measurement legislation that would have the effect of —

- Allowing the sale of meat by each/portion.
- Removing the obligation for nominated pre-packed goods to be sold in prescribed sizes (i.e. those in Table A.1). It is instead proposed that such goods (excluding fruit and vegetables) be unit priced when packed in random mass packs (i.e. priced by the kilogram where the mass may vary from pack to pack).
- Firewood be sold by reference to volume.
- Introducing the average quantity system as the basis for assessing whether packages are short.

- Requiring the total net mass of all eggs in a pack to be shown rather than the number and minimum size of each egg.
- Refining administration and certification procedures. For example, by allowing the use of electronic printing and storage of weighbridge tickets, by combining the licences and certificates of suitability for weighbridges and providing administering authorities more flexibility in setting the frequency with which measuring instruments must be re-certified.

### A.3 OTHER SOURCES OF PROTECTION FOR BUYERS

Purchasers of goods or services have recourse to the provisions of the *Fair Trading Act 1989* (Qld), the *Trade Practices Act 1974* (Cth), and the common law, where the purchaser has been misled, or the goods or services have been misrepresented. All purchases are contracts at common law and where a party to a contract has acted on a misrepresentation, the injured party is entitled to seek to terminate or rescind the contract, and obtain compensation. For example, if the quantity of a good has been misrepresented, this would provide a cause of action for the party injured by the misrepresentation.

Section 44 of the *Fair Trading Act 1989* (Qld) states that —

‘A person shall not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods.’

Where there is a breach of this provision the affected member of the public would be entitled to seek a remedy under the *Fair Trading Act*.

Section 44 of the *Fair Trading Act* reproduces section 55 of the *Trade Practices Act 1974*. Section 55 appears in Part V of the *Trade Practices Act* which provides a wide range of consumer protections. It is noted that section 55 relates to conduct to which the *Industrial Property Convention* applies and depends for its validity on the external affairs power of the Commonwealth Constitution. The enactment of this provision in the *Fair Trading Act* arguably gives the provision a wider operation.

## ANNEX B OBJECTIVES

*This annex provides material on the objectives of the trade measurement legislation. It draws on second reading speeches, policy statements and the agreement between the Commonwealth and States to introduce uniform legislation.*

### B.1 THE MODEL UNIFORM TRADE MEASUREMENT AGREEMENT

In 1990 the Commonwealth, States and Territories (except Western Australia) signed an agreement to standardise much of the states/territories trade measurement legislation (the Model Uniform Trade Measurement Legislation and Administration Agreement). The agreement presents the objectives for trade measurement legislation as follows —

“Whereas

(A) it is generally acknowledged [to be] in the interests of the public and of persons and authorities concerned with the administration of the laws relating to trade measurement that there should be uniformity both in those laws and in their administration in the States and the Territories of Australia in order to promote commercial certainty and bring about a reduction in business costs and greater efficiency in the trade measurement industry that services the marketplace and that the confidence of consumers in the market should be maintained through suitable protection provisions.”

### B.2 QUEENSLAND

No objectives are stated in the *Trade Measurement Act 1990*, which states merely that it is “An Act relating to trade measurement in Queensland as part of the scheme for uniform trade measurement legislation throughout Australia.” In the second reading speech on 1 August 1990, the Minister for Justice and Corrective Services stated that —

“The objective of the Trade Measurement Bill is to reform the law in relation to the measurement of commodities for the purpose of trade in line with the principles enunciated in a national uniform agreement. ... This Bill puts in place uniform legislation designed to ensure that common systems relating to measurement for the purposes of trade are used ... throughout ... the Commonwealth of Australia.” (Hansard p 2616)

No objectives are stated in the *Trade Measurement Amendment Act 1999*. However, in the second reading speech on 8 June 1999, the Minister for Fair Trading stated that —

“The object of the legislation is to ensure the accuracy of measurements conducted in trade situations, for example where the price of goods is determined by reference to their measurement. ...

“The amendments contained in the Bill will contribute to the deregulation of industry by reducing over-bureaucratic requirements placed on industry while retaining the essential requirements of consumer protection.” (Hansard pp 2179-2180)

Earlier legislation (from 1924 to 1958) provides no insight to underlying objectives.

The Public Benefit Test tender documents drafted by Queensland’s Office of Fair Trading (QOFT) state that —

“The objective in regulating the marketplace for trade measurement is to ensure the marketplace functions in a fair and equitable manner.”

QOFT’s Trade Measurement Section defines the purpose of the legislation as —

“To promote the integrity of marketplace trading transactions. The focus is on the fair exchange of goods and services from one person to another, leading to effective marketplace trading practices.”

The Section advised that its rationale is that —

“Accurate measurement in trade is of fundamental importance to the whole community. It is the right of every trader and consumer to expect correct measurement when purchasing goods or services. The role of the Trade Measurement Section in Queensland is to protect the integrity of the measurement system in this state.”

## NEW SOUTH WALES

The *Trade Measurement Act 1989* (updated 7 Jan 1999) states that it is “An Act relating to trade measurement in New South Wales as part of the scheme for uniform trade measurement legislation throughout Australia.” The object of the *Trade Measurement (Weighbridges) Regulations 1997* was listed as “to repeal and remake, without change, the provisions of the *Trade Measurement (Weighbridges) Regulations 1991*.” Regulations concerning pre-packed articles and measuring instruments are listed as having similar objectives.

In a briefing paper on the NCP review, the NSW Department of Fair Trading defined the objectives of the legislation as follows —

“The objective of the trade measurement system is to achieve and maintain confidence in the marketplace where trade is conducted by reference to measurement and that NSW be recognised for good trade measurement practice and principle within the national measurement system.”

## VICTORIA

The *Trade Measurement Act 1995* states that “The purpose of this Act is to enact uniform trade measurement legislation in Victoria.”

A joint second reading of the *Trade Measurement Bill* and the *Trade Measurement (Administration) Bill* was made in April 1995. The second reading speech by the Minister for Agriculture did not address the broader objectives of trade measurement legislation, but was confined to the benefits to be gained by substituting uniform legislation for the existing state legislation. The Minister noted that there would be efficiency gains and improved administration from the change. He said that —

“Generally speaking, the adoption of uniform trade measurement legislation will facilitate greater self-regulation by industry and a less interventionist role for government....These key reforms will produce savings to both business and government.”

The Regulatory Impact Statement for the *Trade Measurement Regulations 1995* (Department of Business & Employment) stated that —

“The objectives of the proposed regulations are to provide business and consumer confidence in the integrity of the trade measurement system, a national approach and to recover the full cost of services provided by Trade Measurement Victoria.”

The objectives of the *Trade Measurement Regulations 1995* are solely of a technical nature.

#### SOUTH AUSTRALIA

The *Trade Measurement Act 1993* (reprinted as in force at 10 March 1997) states that it is —

“An Act relating to trade measurement in South Australia as part of the scheme for uniform trade measurement legislation throughout Australia.”

In the second reading speech in May 1993, the Minister for Housing, Urban Development and Local Government Relations stated —

“This Bill has two key purposes. Firstly, it simplifies and modernises current State laws relating to trade measurements and packaging ... The new legislation is a response to changes in technology and the marketplace, and will establish an appropriate legal framework for trade measurement administrators as we approach the 21st Century.

“Secondly, it brings a step closer the objective of nationally uniform laws ..... (which have) ..... become a priority because the advances in technology and transport since Federation have transformed Australia into one market. The existence of differing laws concerning trade measurement and packaging in each State and Territory creates unnecessary impediments to national and international trade, and adds significantly and unnecessarily to the costs of business. Industries affected by trade measurement legislation have been unanimous in their support for unifying the law.” (Hansard p. 3350, 4 May 1993)

#### TASMANIA

The *Trade Measurement Bill 1999* and the *Trade Measurement (Tasmania) Administration Bill 1999* were approved by the Tasmanian Parliament on 22 December 1999 and are expected to take effect around July 2000. The object of the Act is —

“To facilitate a scheme of uniform trade measurement legislation throughout Australia.”

The objectives of the proposed Tasmanian legislation were defined in a 1998 Regulatory Impact Statement, as follows —

- The broad objective of the legislation (and its associated administration) is to maintain fair market place practices in relation to the sale of goods by reference to measurement (i.e. quantity), which is consistent with a level of protection and cost acceptable to the Australian community.
- National uniformity (to facilitate trade across State borders and to reduce compliance costs for instrument owners).
- Minimising transaction costs.
- To provide flexibility in the use of Government Inspectorate resources by providing for private sector participation in the certification of new and repaired measuring instruments.

#### AUSTRALIA CAPITAL TERRITORY

The objectives of the *Trade Measurement Act 1991* were outlined in the second reading speech —

“Technological advances have caused many changes in the marketing and packaging of goods. Consumers often find that it is difficult to be sure that they are getting what they pay for. This legislation is aimed at ensuring that unfair trade measurement practices such as short weight or measure are more easily detected and that compliance with the law is more easily achieved.

“The adoption of uniform legislation throughout Australia will also bring great benefits to traders by promoting commercial certainty. This will lead to a reduction in business costs and greater efficiency in the trade measurement industry which services the entire Australian marketplace. It is expected that such savings will be passed on to consumers.”

#### NORTHERN TERRITORY

The *Trade Measurement Act* states that it is —

“An Act to make provision with respect to trade measurement in the Northern Territory as part of the scheme for uniform trade measurement legislation throughout Australia”

In the 1990 second reading speech of the *Trade Measurement Bill* and the *Trade Measurement Administration Bill*, the Minister said that the purpose was to update a significant body of law regulating commerce in the Northern Territory and to move towards uniformity in trade measurement legislation across Australia. He said that —

“Uniform legislation is a pre-requisite for effective trade between States and territories and international commerce. This is particularly so as technological change and improvements in transport links since Federation in 1901 have transformed distinct state and territory markets into one national market. Differences in state and territory Weights and Measurement requirements unnecessarily impede business by creating additional costs and ‘red tape’.”

## ANNEX C    INSIGHTS FROM ECONOMIC THEORY

*This annex presents material from economic theory relevant to an assessment of the trade measurement legislation. The focus is on the nature of information failures.*

### C.1    A RATIONALE FOR GOVERNMENT INTERVENTION

Market mechanisms can be an efficient way of determining people's preferences and allocating resources so as to achieve the greatest social welfare (in terms of those preferences). In those cases where markets do not function optimally, known as "market failure", there may be a rationale for government intervention.

The concept of market failure is based on economic efficiency concepts — not the failure of the market to deliver a certain social outcome. An economy is said to be efficient when there is no way to make at least one person better off without making someone else worse off. If there is market failure, an economy will be inefficient in an economic sense, and there is scope to increase social welfare. In a simple framework, the correction of market failure will lead to at least one person being better off without making anyone worse off.

The form of market failure which is most relevant to the review of trade measurement legislation is *information failure*. In a completely free market, consumers and firms may find it costly to obtain relevant, reliable information on the nature and quality of an article. For example, it may be costly for an individual to assess which butcher provides the best value for money or whether a hotel is providing the promised volume of beer. Firms may find it hard to convince consumers they are providing the promised weight or volume and may face information problems during production, for example in establishing the weight of bulk produce provided by truck. Such information problems can lead to an inefficient market outcome and public dissatisfaction.

Consumers and businesses can overcome information failures by acquiring information. But this may incur high transaction costs. Transaction costs include the costs incurred in

information gathering, negotiation, co-ordination, administration, monitoring and enforcement. These costs can make it difficult for markets to work effectively or exist at all.

Where substantial information failures are present, economic performance may be improved by the introduction of measures to improve the knowledge of buyers about the nature of the product or service they are considering purchasing, and their knowledge about whether they are receiving value for money (the information failure problem is discussed in more detail below).

The presence of *public goods* is another form of market failure. An essential feature of a public good is that it is difficult to charge individuals directly for what they use. The other feature is that any number of persons may enjoy the benefits of the good without reducing the benefits to others. Law and order is an example of a public good. The existence of public goods provides one of the strongest reasons for government intervention. However, a major problem faced by policy-makers is determining how much of the public good to provide and how to provide it effectively, as price and market mechanisms do not operate.

*Externalities* are also relevant. Externalities are essentially spillover effects that are not adequately captured in the prices individuals face or the benefits and costs that directly affect them. For example, all producers of a good may benefit from advertising an homogeneous product.

Government intervention may be able to correct market failure. However, government intervention can also fail and lead to worse outcomes. Common causes of “government failure” are an insufficient capacity within government to analyse and address the key problems and to develop and implement suitable responses. Government intervention can also have unintended adverse impacts — for example, excluding access to lower-priced goods that don’t comply with labelling or packaging requirements may have an adverse impact on low-income households. In addition, an intervention which had benefits when initiated might have negative impacts as circumstances change over time or become unnecessary as an economy’s markets and institutions develop over time.

Even with well-functioning markets, a government may choose to intervene if it considers that the market is unlikely to achieve its social, environmental or other objectives. For example, depending on community values, some market outcomes may be preferred to others

because they are seen as more equitable than others. This concern in equity, etc provides another rationale for government intervention.

Drawing on the Competition Principles Agreement signed by the Commonwealth and the States and Territories, this additional rationale can be thought of as encompassing social welfare considerations and regional development. So if, for example, a certain age group was particularly exposed to the impact of poor standards with respect to trade measurement, this could indicate that the benefits of regulation exceed the costs. This could be a reasonable conclusion even if it was considered that there was not a market failure problem.

In a simple economic framework the efficiency and equity issues can be treated as separate problems. That is, a market failure could be corrected by one policy instrument, with any inequities addressed by a separate instrument. Such a separation would simplify the policy problem. But in practice the two issues can rarely be neatly separated and the potential efficiency and equity impacts of all interventions need to be carefully considered.

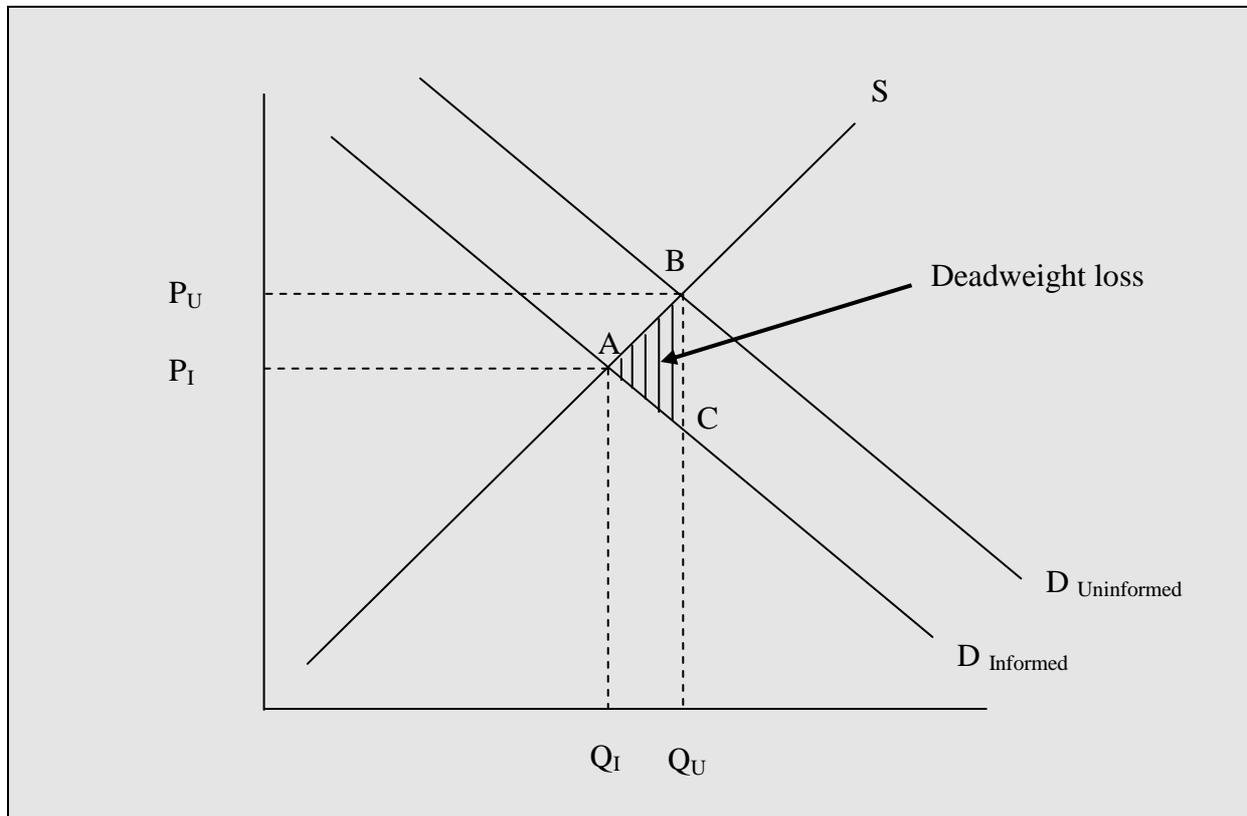
## C.2 INFORMATION FAILURE IN MORE DETAIL

The problem created by information failures is illustrated in Box C.1. Information failures lead to a divergence between the preferred level of demand and the actual level. This is shown in Box C.1 by the presence of two demand curves,  $D_{\text{Informed}}$  and  $D_{\text{Uninformed}}$ . An information failure leads to the user over-estimating the value of a good or service. Consequently  $D_{\text{Uninformed}}$  is to the right of  $D_{\text{Informed}}$ . Users demand more than if they were fully informed, with the result that both price and quantity when uninformed (i.e.  $P_U$  and  $Q_U$ ) are higher than they would be if the user was fully informed (i.e.  $P_I$  and  $Q_I$ ).

In this case a deadweight loss results equal to the shaded area ABC. If the user was fully informed they would have paid  $P_I$  for the initial  $Q_I$  units. Instead the information failure leads to the user paying  $P_U$ . For the extra  $Q_I Q_U$  units, the user also pays  $P_U$ , but this is more than the good or service is truly worth to the user (as shown by the demand curve). The total loss to the user is equal to the area  $P_U B C A P_I$ . The area  $P_U B A P_I$  is captured by the supplier as extra producer surplus, with the result that the deadweight loss equals the shaded area ABC. This deadweight loss is in addition to the transfer from the user to the producer.

Looked at from another perspective, the user would have been willing to pay up to the value of the area ABC for someone to provide the missing information. Provided they were able to pay less than ABC, they would be better off.

BOX C.1 OVER-USE BECAUSE OF INFORMATION FAILURE



Source: Adapted from Vining and Weimer (1988) pp. 282-284 and Peltzman, 1973, pp. 1059-1060.

This case provides a basic rationale for intervening to protect consumers and businesses. That is, intervention may be justified if suppliers can mislead users into over-estimating the value of their good or service.

The opposite case could also apply when an information failure emerges that results in users under-estimating the value of a good or service. In which case there is a tendency for usage to be too low. But suppliers have an incentive to correct the information failure by supplying additional information, ensuring users are fully-informed and so increasing their usage to the optimal level. When this is possible there would be no rationale for government intervention as the market can solve any information failure problem that emerges.

An exception could be when the information is by nature a public good or generates externalities.<sup>20</sup> That is, information is non-excludable and cannot be charged for or alternatively generates benefits for all suppliers of a product, not just the supplier providing additional information. While the good or service would in total be under-used, suppliers may be unable to justify the expense of informing the market to the optimal level, if at all. A possible condition under which this could arise is when products are very similar. This could mean that any single supplier may be unable to distinguish their good or service from another.

A further concern was raised by Akerlof (1970) as the market for ‘lemons’. Where value for money is difficult to determine and is under-estimated, price may dominate the transaction at the expense of quality. The result can be a substantial decline in average quality in the market and a reduction in market transactions. Since people would prefer a better quality service, but such quality is not available due to market failure, there is an associated net loss to society.

A deterioration in quality from information failures normally requires at least two key assumptions to hold. Firstly, that users cannot properly assess quality and therefore will not reward it appropriately. Possible causes of this problem are dishonesty amongst sellers or when quality can only be assessed after purchase. The result is that better quality goods or services are paid the same price as lower quality goods or services, reducing the incentives to supply above average quality and increasing the incentive to supply below-average quality. Secondly, that those suppliers that don't get appropriately rewarded for their quality leave the industry. Together, the two assumptions suggest that suppliers of above average quality will tend to leave an industry or reduce the quality of their product or service. As a result, in the extreme case the market can completely collapse.

Many authors have extended this analysis. For example, Leland (1979, 1980) presents the market for ‘lemons’ problems as a rationale for licensing systems (see Box C.2). Heal (1976) highlighted the importance of buyers being short-sighted if good products are to ‘drive out the bad’. Kim (1985) presented a more general model to that presented by Akerlof, illustrating the dependence of Akerlof’s result on key assumptions regarding behaviour. For

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<sup>20</sup> See for example Vining and Weimer (1988), p.284 and Beales et.al (1981), pp.503-505 for a discussion.

example, the problem may be limited if users choose to sustain the quality of their purchases through good maintenance, which is however possible for some markets.

## BOX C.2 A RATIONALE FOR LICENSING SYSTEMS

The seminal article on information failures is Akerlof's work on the market for used cars (Akerlof 1970). Akerlof demonstrated that the presence of information asymmetries — a difference in the quality of information held by buyers and sellers — can lead to certain types of market failure. Leland (1979, 1980) further develops Akerlof's findings to an analysis of the system of licensing medical doctors. The rationale developed for such a licensing system can potentially apply to a range of other services, such as the maintenance and verification of weighing instruments. That is, systems of licenses may be justified to ensure minimum quality standards.

The case for licensing was described by Leland as follows —

"If there were no licensing standards, 'doctors' could range from those who are highly qualified to those who are 'quacks'. Doctors know their own abilities, and those who are more qualified have better alternative opportunities for employment. Patients, on the other hand, have difficulty in distinguishing the relative qualities of physicians. All doctors must therefore command the same fees, which will reflect the average quality of medical services.

Doctors (or potential doctors) with above-average opportunities elsewhere may not be willing to remain in (or enter) the market, since the price they receive will reflect the lower average quality of service. Their withdrawal from the market lowers the average quality of medical services, the price falls and further erosion of high-quality physicians occurs. Depending on parameters ..., the market may degenerate until only quacks are practicing medicine. ... The ideal remedy, of course, is to eliminate informational asymmetries. In some case, repeat purchases, product labelling, and other forms of product information may reduce or eliminate asymmetries. But in many cases, eliminating informational differences may be very expensive — too expensive relative to the potential welfare gains. Less expensive means of reducing quality deterioration should be considered. One such device might be making sellers liable for poor-quality products or services ... While such liability may be useful in cases in which product failure is readily evident ex post, it may be difficult or impossible to ascertain product failures in cases where the effect is long delayed and partial. A poor plumbing job might not show up for several years, and there might then be doubt as to whether it was caused by the plumber, by misuse, or by an "act of God." The plumbing jobs performed by physicians are presumably even more difficult to assess.

An alternative and perhaps less expensive means for averting quality deterioration may be some form of simple screening device, which would (perhaps partially) eliminate the quacks and lemons — in fact, licensing or other forms of minimum quality standards." (pp. 1329-1330)

It is also the case that licensing can have detrimental side effects. The net benefit offered by licensing depends on whether the positive effects of retaining high quality suppliers outweigh the negative effect of excluding lower quality, and hence cheaper, suppliers. A practical concern is that quality standards set by a regulated professional group or industry can have a tendency to become too tight and exceed the socially desirable level (p.1338).

The economics literature helps clarify which goods are likely to be subject to information failures. Key considerations are the frequency of purchases, the variance in the quality of units and the cost of establishing through search the nature of a product relative to the total purchase cost. Information failures are less likely to arise the more frequently purchases are

made, the lower the variance in products and the lower the search cost relative to total costs (and vice versa.)

Vining and Weimer (1988) distinguish between search goods, experience goods and post-experience goods. The characteristics of search goods can be readily assessed before purchase, the characteristics of experience goods can only be assessed after use, while the characteristics of post-experience are difficult to assess even after use. For example, furniture and paper are search goods, food and services are typically experience goods while drugs tend to be post-experience goods.

Search goods are unlikely to suffer from information failures, particularly when purchased frequently. This means government intervention in such markets is difficult to justify. The case for intervention in markets for experience goods is typically stronger. But it remains relevant to consider frequency of purchase, variance and search costs. For example, a buyer of meat may make a bad purchase once or perhaps a few times from the same supplier, but if they make frequent purchases they will learn from their experience and try a different supplier. Information failures are very likely for post-experience goods because the quality is so hard for a consumer to assess. But market solutions are possible even for such goods, because information on quality can have market value (e.g. information on the safety of a drug or its effectiveness). This means that private supplies of information may emerge.

Free markets have some capacity to correct any information failures that emerge. Advertising, the development of brands, the provision of warranties and the emergence of independent sources of information or systems of self regulation are possible market solutions. This means that the presence of an information failure does not automatically justify intervention.

It is also the case that the costs imposed by inappropriate government intervention can outweigh any benefits. So, for example, the cost of restricting how a retailer could operate may more than offset the benefits of improving information flows. Consumers and industry regularly make decisions under uncertainty, and it may be preferable to allow some imperfections in the operation of the market rather than create larger imperfections from inappropriate government regulation.

## ANNEX D THE ‘RULES’ OF A PBT

*This annex summarises the key requirements of a public benefit test as defined in the Competition Principles Agreement and related guidelines.*

In conjunction with the adoption of the National Competition Policy, in 1995 the Commonwealth, State and Territory Governments signed a Competition Principles Agreement. Under the Agreement, each government was to review and if necessary reform by 2000, all legislation that restricted competition.

As defined in the Competition Principles Agreement, the guiding principles for such reviews are that legislation should not restrict competition unless it can be demonstrated that —

- “The benefits of the restriction to the community as a whole outweigh the costs; and
- The objectives of the legislation can only be achieved by restricting competition.”  
(Paragraph 5(1))

There is a presumption in the Competition Principles Agreement in favour of competition as being most likely to achieve the best outcomes for the welfare of society. There is no obligation under the Competition Principles Agreement to establish net benefits to the community from removing restrictions to competition.

However, any proposal to retain or introduce legislation which restricts competition must be supported by a Public Benefit Test (PBT) that demonstrates compliance with the guiding principles. This requires an assessment of the costs and benefits associated with the legislation in question and the alternatives.

The Competition Principles Agreement states that a PBT should —

- clarify the objectives of the legislation.
- identify the nature of restrictions on competition.
- analyse the effects of these restrictions.

- analyse benefits and costs.
- consider the alternatives and make appropriate recommendations.

The costs and benefits to be considered encompass not only economic and financial effects, but also social, environmental and other considerations. The Competition Principles Agreement requires that the following issues be considered when examining legislative restrictions on competition —

- Government legislation and policies relating to ecologically sustainable development.
- Social welfare and equity considerations, including community service obligations.
- Government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity.
- Economic and regional development, including employment and investment growth.
- The interests of consumers generally or a class of consumers.
- The competitiveness of Australian business.
- The efficient allocation of resources (Paragraph 1(3)).

Some states have clarified their interpretation of the legislative review process through the release of supporting guidelines. For example, the Queensland Guidelines appear to reverse the onus of proof established under the CPA. The introduction to the *Queensland Treasury Public Benefit Test Guidelines* (1999) states that the —

“Governments have a responsibility to ensure that NCP reforms are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment to the community.” (Queensland Treasury (1999) p.1)

The Queensland Guidelines require that "only those options that are consistent with, and support, the Government's Priority Outcomes should proceed for further consideration." These are defined as —

- More jobs for Queenslanders.
- Building Queensland's regions.
- Skilling Queensland.

- ❑ Safer and more supportive communities.
- ❑ Better quality of life.
- ❑ Valuing the environment.
- ❑ Strong government leadership (Queensland Treasury 1999 p.8)

Not all of the key issues identified in the Competition Principles Agreement are spelt out in the Queensland Government's Priority Outcomes. Nevertheless, it can be argued they are embodied in the Priority Options. For example, it is generally recognised by advisers on public policy that providing more jobs requires improving the efficiency of an economy.

It is not known if other states have also specified additional requirements for PBTs. While the proposed review of trade measurement legislation is a national one, it is sensible that it is compatible with the requirements of all participating states. This suggests that the PBT of the trade measurement legislation needs to establish that there are clear net benefits from the removal of any restrictions to competition.

It is worth noting that any PBT conducted under the Queensland system would need to be preceded by the preparation of a Public Benefit Test Plan. The required components of such a plan are listed in Box D.1.

### BOX D.1 THE QUEENSLAND REQUIREMENTS FOR PBT PLANS

The Public Benefit Test Plan establishes the framework for conducting the review and must include the following elements —

- Title of legislation.
- Restrictive provision of the legislation —
  - identify the anti-competitive restrictions
  - briefly describe the restrictions.
- Objectives of the legislation —
  - describe the overall objectives of the legislation
  - are the objectives still relevant today (important if old legislation)
  - how do restrictions help achieve the objectives.
- Alternative options —
  - describe the major realistic alternative arrangements (including discussion on interstate arrangements) for achieving the objectives of the legislation
  - alternatives may range from less restrictive (but still regulatory) provisions to complete deregulation
  - this does not limit consideration of further alternatives as the review progresses.
- Key affected groups —
  - identify the key groups that would be affected by a change in the regulatory environment
  - this is not limited to the direct industry involved, but may also include potential entrants, consumers, environment, regional communities etc
  - develop an impact matrix that identifies the potential impacts on these affected groups of moving to an alternative state. This is not an assessment but simply identifies some of the likely positive and negative impacts on each group. Again, this does not preclude further identification of impacts as the review progresses.
- Types of assessment —
  - the form of assessment to be used in the review, i.e. major, minor, short form
  - summarise the reasons for choosing the assessment type.
- Process to be used in assessment (Type of review model) —
  - the type of review model to be used, i.e. Full public inquiry, Departmental Review etc
  - summarise the reasons for choosing the review model
  - identify the likely structure of the review committee (agencies/bodies involved rather than names)
  - extent of external expertise required, e.g. is a consultant to be employed to under PBT.
- Consultation —
  - extent and process of consultation, e.g. issues paper, public hearings, stakeholder reference panel.
- Timing —
  - timeframe for each major stage of the project
- Budget —
  - an estimate of the likely cost of conducting the review
  - this is important if departments are applying to Treasury to fund the review out of competition payment funding.

Source: Queensland Treasury (1999) pp.20-21

## ANNEX E CONSULTATION

*This annex summarises the consultation drawn on in preparing this scoping study.*

Trade measurement inspectors accompanied the consultant to 15 retail outlets and 3 weighbridges in the Brisbane region. Some premises were officially inspected, and interviews on operating practices and the impact of trade measurement legislation were held with most on-site manager/operators. The consultant separately interviewed by phone or face-to-face more than 30 organisations in Australia and New Zealand, most being industry participants or industry associations (see Table E.1). In addition, a number of weighbridges in Queensland and inter-state were consulted in order to obtain data used in a indicative examination of the benefits of the public weighbridge system.

Consultation sought to identify the impact of the current legislation. It was expected that it would be difficult to identify the benefits of the current legislation (because they are almost unnoticeable and are spread over a large number of transactions by a large number of people). Consequently, the focus was on establishing if any problems were created by the current legislation. When significant problems were identified without provision of the legislation, the consultation sought to identify the potential benefits of the legislation. A list of typical questions asked is provided at Table E.2.

Over 1997 and 1998 TMAC consulted industry and consumer groups on a range of proposed changes to the trade measurement legislation (the key proposals were summarised in Annex A under the heading of TMAC Proposed Amendments). It is understood that some members of TMAC were not completely satisfied with this round of consultation, with the absence of any issues paper explaining the pros and cons of the proposed amendments seen to result in a lack of a suitable understanding by some respondents. Nevertheless the material provided useful insights into industry and consumer attitudes and was drawn upon in preparing this scoping study.

TABLE E.1 ORGANISATIONS INTERVIEWED

Organisation	Region	Representative	Position
Baking Industry Association of Queensland	Queensland	Mr Chris Sweeney	General Manager
Clubs Queensland	Queensland	Mrs Penny Wilson	Chief Executive Officer
Grainco	Queensland	Mr Graham Washington	Operations Manager – Country
Hotels and Motel Association	Queensland	Mr Greg Holmes	General Manager
National Meat Association of Australia – Queensland Division	Queensland	Mr Bob Macleod Mr Graham Sheehan	Executive Director Industry and Trade Consultant
Queensland Consumers Association	Queensland	Mr Max Howard	State Secretary
Queensland Department of Tourism and Racing	Queensland	Mr Brian Bauer	Manager, Industry Development Unit
Queensland Hotels Association	Queensland	Mr Michael Hudson	General Manager
Queensland Seafood Marketers Association Inc	Queensland	Mr Bernard Hart	Secretary
Restaurant and Caterers Queensland	Queensland	Mr James Visser	Chief Executive
Retailers Association of Queensland	Queensland	Mr Phillip Jeffle	Membership Officer
Southbank Catering Company	Queensland	Mr Hugo Martin	General Manager
Stafford Adamson and Associates	Queensland	Mr Greg Adamson	Principal
Coles Myer	National	Mr Chris Mara	Government Affairs Manager
Franklins Ltd	National	Mr Phil Morley	National Business Manager, Meat
Gilbarco	National	Mr Ken Burt	Director, Sales and Service (and National President, Contractors Association)
Gould & Kennedy	National	Mr Ross Worley	Sales Manager
Lenards	National	Mr Paul Bardwell Mr Lenard Poulter Mr Mike Rowley Mr Bob Retallick	Executive Chairman Founder and Executive Director, Concepts National Retail Manager Product Purchasing Manager
Mettler Toledo	National	Mr John Hardy	General Manager (also Executive Director, Weighing Industry Association)
National Standards Commission	National	Mr John Birch	Executive Director
Public Weighbridge Owners Association	National	Mr Roger Armstrong	President (and Manager, Standard Weighbridges)
Weighing Industry Association of Australia	National	Mr Adrian Caster	National President
Clubs NSW	NSW	Mr Steven Henchley	State Policy Officer
Standard Scale Pty Ltd	NSW	Mr Peter Clarke	Managing Director, NSW (and Chairman, NSW Branch of Weighing Industry Association of Australia Ltd)
Northern Territory Fuels Pty Ltd	Northern Territory	Mr Peter Mostram	Owner
National Meat Association of Australia – Victorian Division	Victoria	Mr Renie Scheafer	Executive Officer
PG Bouchier	Victoria	Mr Peter Bouchier	Owner
NZ Ministry of Consumer Affairs	New Zealand	Mr John Barker	Senior Adviser (Policy)
Consumers Institute of NZ Inc	New Zealand	Mr Peter Sutton	Assistant Chief Executive
Poultry Industry Association of NZ	New Zealand	Mr Bob Diprose	Executive Director
NZ Retail Meat and Allied Federation	New Zealand	Mr David Longsdale	Executive Director

TABLE E.2 TYPICAL QUESTIONS RAISED WITH THOSE CONSULTED

RESTRICTION	TYPICAL QUESTION/ISSUE
A RESTRICTIONS ON THE METHOD OF SALE	
A1 Restrictions on meat	<p>Do the restrictions influence the degree of processing of red meat?            What meat that can be sold by each is sold by weight?            Why is meat that can be sold by each sold by weight? Is it related to the ability to standardise the product size or consumer reluctance to pay a high price per kilogram?            Do sellers of meat that can be sold by each have an advantage over other sellers?            What is the industry and consumer view of the restriction?            Are items sold by each normally purchased from wholesalers, etc, by each?            Do differences between jurisdictions significantly affect industry operations?</p>
A2 Restrictions on spirit and beer	<p>Can a consumer readily determine the volume of spirit provided?            Do consumers ask what volume of spirit is provided?            Is there much variation between suppliers in the volume of spirit or beer offered per drink?            Does the different treatment of the regulated spirits (e.g. gin, rum, vodka, and whisky) affect consumer choice or supplier behaviour?            How many different lines of spirit, wine and beer are typically on offer?            What impact have the changes in enforcement/practices had over the 1990s?            What is the industry and consumer view of the restrictions?            Do the labelling requirements on beer glasses significantly restrict the choice of glass or raise their cost significantly?</p>
A3 Labelling and measurement of pre-packaged goods	<p>What influences the retailer's decision to pre-pack goods?            Do the labelling requirements impose significant restrictions on how retailers wish to do business?            Do the requirements add significantly to business costs?            Is a bias created between pre-packed and non-packed goods (in particular those that can be sold by each in a non-packed state)?            Is there a noticeable trend in the nature and extent of pre-packaging?            What is the industry and consumer view of the restrictions?            Are these differences in the requirements between jurisdictions that have a significant impact on industry operations?</p>
A4 Labelling and packaging requirements for certain articles (e.g. certain pre-packed food, eggs, bedsheets)	<p>Do the labelling requirements impose significant restrictions on how retailers wish to do business?            Do the requirements add significantly to business costs?            Do they create barriers to new entrants (e.g. small local suppliers of eggs)?            Would consumers value more flexibility in the selection of such goods?</p>

TABLE E.2 CONTINUED

RESTRICTION	TYPICAL QUESTION/ISSUE
<p>B THE USE OF MEASURES AND MEASURING INSTRUMENTS</p> <p>B1 The oversight of measurement standards</p> <p>B2 The prohibition on end-and-end weighing</p>	<p>What is the cost to business of complying with the standards?</p> <p>Are there circumstances in which lower standards would be acceptable to industry?</p> <p>What is the industry view of the standards?</p> <p>Does industry allocate significant resources to ensuring compliance between tests by inspectors?</p> <p>Do buyers inquire as to the nature of compliance systems (e.g. frequency of compliance checks)?</p> <p>Does industry have much flexibility in buying goods other than by methods that don't require a (regulated) measuring instrument (e.g. by truck)?</p> <p>Are there differences between jurisdictions that have a significant impact on industry operations?</p> <p>Does the restriction significantly reduce options available to industry for weighing?</p> <p>Is there much industry interest in end-and-end weighing?</p> <p>Are public weighbridges set up for accurate end-and-end weighing?</p> <p>Are there differences between jurisdictions that have a significant impact on industry operations?</p>
<p>C RESTRICTIONS ON PRIVATE SECTOR SERVICE PROVIDERS</p> <p>C1 The licensing of service organisations</p> <p>C2 The licensing of public weighbridges</p>	<p>Do the restrictions exclude appropriate service providers?</p> <p>Do licensees compete with government inspectors? If so, what are key factors affecting the nature and extent of competition (e.g. controls on fees, frequency of servicing)?</p> <p>Is the cost of obtaining a licence a significant share of business costs?</p> <p>Is there a need for licensing, or would it be sufficient to impose only the required quality standards of service providers?</p> <p>Are the obligations on licensees too restrictive?</p> <p>Do the obligations on licensees differ between jurisdictions? If so, do the differences have a significant impact on licensee operations?</p> <p>Is the cost of obtaining a certificate of suitability a significant share of business costs?</p> <p>Would industry be interested in the option of using the private weighbridges of third parties?</p> <p>Are the obligations on operators of public weighbridges significantly more onerous than operators of private weighbridges?</p>

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