



Ms Katherine Jones
Deputy Secretary, National Security and Criminal Justice Group
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

Dear Ms Jones

Enforcement agency access to telecommunications data

Thank you for the opportunity to provide a submission in support of the National Measurement Institute continuing to be considered an enforcement agency for the purposes of the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*.

The continued ability to access telecommunications data, specifically the name and address of a trader suspected of breaching trade measurement law, will be a valuable tool for the Institute's trade measurement inspectors investigating alleged breaches of the law, issuing pecuniary penalties, and making referrals to the Commonwealth Director of Public Prosecutions.

I have below outlined a case for continued access addressing the matters raised the guidance document attached to your letter of 22 May.

I look forward to your favourable consideration.

The National Measurement Institute

The National Measurement Institute (NMI), a division of the Department of Industry and Science, administers the National Measurement Act 1960 (the Act) and the National Trade Measurement Regulations 2009 (the Regulations).

The Act and the Regulations set out a regulatory framework for trade measurement (weights and measures) including penalties for breaches of the legislation.

Under the Act:

- Section 4 (1) (e) states one of the objects of the Act as: "to provide for a national system of trade measurement";
- Section 17 specifies there is to be a National Measurement Institute within the Department;
- Section 18 (1) states the Secretary of the Department has metrological functions of the Commonwealth;
- Section 18C provides for the Secretary to delegate functions under the Act to Departmental and NMI staff; and
- Section 18MA provides the Secretary may appoint a trade measurement inspector. All inspectors appointed are staff members of the National Measurement Institute.

A spreadsheet detailing the sections of the Act and the regulations within the Regulations carrying pecuniary penalties for breaches is attached.

After consideration of non-compliance identified by trade measurement inspectors, NMI may decide to issue an infringement notice with associated fine, or in the most severe cases refer the matter to the Commonwealth Director of Public Prosecutions.

Enforcement of the Law/Pecuniary Penalties

The trade measurement inspectors employed by NMI can visit a place of business “at any reasonable time of day” in response to a complaint or enquiry, or as part of compliance inspection program.

The powers of inspectors include:

- entering and searching a building, place or vehicle apparently used for business, but not residential premises unless the inspector has a warrant or the person in control of the residence (the ‘controller’) consents;
- recording details of the building, place, vehicle, packages or measuring instruments by filming, photographing or making sketches and notes;
- testing packages by examining or measuring, which may require breaking them open
- testing and verifying measuring instruments;
- checking the verification marks of servicing licensees have been properly applied to a measuring instrument and details of verification have been notified to NMI;
- examining a packer’s, importer’s, possessor’s or seller’s records, and taking copies of documents when necessary;
- seizing documents, records, packages or measuring instruments;
- getting records or documents translated into English where needed;
- asking questions and requiring answers;
- requiring facilities and assistance; and
- issuing non-compliance notices.

NMI inspectors can also make ‘trial purchases’ to anonymously check whether correct procedures are being followed in the normal course of business.

NMI inspectors audited almost 10,000 businesses and issued over 3,500 non-compliance notices during 2013-14. The majority of these compliance issues were minor and fixed by the business after receiving a non-compliance notice and advice from the inspector.

However, when continued non-compliance is detected after a notice has been previously issued or a breach detected in an initial audit is particularly severe, enforcement actions of a more serious nature is taken. This includes infringement notices with associated fines. In 2013-14, NMI imposed 138 fines totalling more than \$150,000 and referred six matters to the Commonwealth Director of Public Prosecutions to consider for further legal action.

Telecommunications Data

Trade measurement inspectors may be hindered in their investigation of breaches of trade measurement law by being unable to identify a trader suspected of breaching the law or establishing their place of business.

It is not uncommon for traders to provide only a mobile/landline phone number when advertising their products. When investigating an alleged short measure or other breach of the law in a transaction where the only contact information provided by the trade is a telephone number, inspectors are unable to identify and locate the alleged perpetrator. The increase in on-line trading is exacerbating this difficulty. This impedes the investigation and, in some cases, places NMI

inspectors in a position where they are unable to proceed and alleged breaches of the law are allowed to continue.

As an enforcement agency for the purposes of the Data Retention Act, NMI inspectors would use telecommunications data, specifically name and address of a trader suspected of breaching the National Measurement Act or the National Trade Measurement Regulations, to:

- conduct an interview with the trader;
- inspect premises, including measuring instruments, trading practices, and pre-packaged goods; and
- undertake enforcement actions where required, including issue of infringement notices (with associated fines) and referral to the Commonwealth Director of Public Prosecutions.

Privacy

The National Measurement Institute, as a division of the Department of Industry and Science (the Department), is bound by the Australian Privacy Principles (APPs) outlined in Schedule 1 of the Privacy Act 1988 (Cth) which regulates how entities may collect, use, disclose and store personal information. The Department respects the right to privacy under the Privacy Act and complies with Privacy Act requirements in relation to the collection and management of personal information.

Personal information including the names and addresses of traders suspected of breaching the National Measurement Act or the National Trade Measurement Regulations would be stored and held in accordance with the Department's obligations under the Archives Act 1983 (Cth). Personal information obtained would only be used and disclosed for the purposes listed under the 'Telecommunications Data' heading above.

Further information about how the Department manages personal information in accordance with the APPs is available in the Department's Privacy Policy.

Public Interest

NMI is the national regulator of all trade transactions involving measurement. From firewood and fuel, to milk, groceries, gold and iron ore — trade measurement covers a wide range of goods and transactions in the Australian economy.

Australian businesses and consumers purchase millions of goods every day expecting that they will receive the correct weight, volume or length of the goods they've paid for.

NMI's national trade measurement compliance program supports the economic wellbeing of the country and the efficient operation of the market by helping to ensure that businesses and consumers can have confidence that they are receiving fair measure.

Yours sincerely



Dr Peter Fisk
Chief Executive
National Measurement Institute

7 July 2015