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No. 74 2003–04

National Measurement Amendment Bill 2003

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National Measurement Amendment Bill 2003

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National Measurement Amendment Bill 2003

Date Introduced: 3 December 2003

House: House of Representatives

Portfolio: Industry, Tourism and Resources

Commencement: A number of the provisions in the Bill commence on Royal Assent. Parts 1, 2 and 3 of Schedule 1 commence on a day to be fixed by Proclamation, or if this is not within six months of Royal Assent, the first day after that period. Items 1 and 4 of Schedule 2 commence immediately after the commencement of Parts 1, 2 and 3 of Schedule 1.

Purpose

The purpose of the Bill is to establish a National Measurement Institute by the amalgamation of three government agencies. These existing agencies are the National Measurement Laboratory (within CSIRO), the National Standards Commission and the Australian Government Analytical Laboratories. The amalgamated National Measurement Institute will be located within the Department of Industry, Tourism and Resources.

Background

Constitutional Authority

Section 51 (xv) of the Constitution provides the Parliament with the power to make laws with respect to weights and measures. This constitutional head of power is uncontroversial and one commentator on constitutional law has noted:

So the power is not restricted to the bare fixing of standards of weights and measures, but could extend to the creation of agencies in these areas e.g. to supervise an introduced metric system.¹

The Commonwealth's *National Measurement Act 1960* (the Act) establishes an Australian national system of units and standards of measurement. The Act also allows concurrent operation of certain State laws, including those that relate to regulating improper practices in connection with weights and measures e.g. to protect consumers. At present, the scientific regulation of standards is committed to the CSIRO.

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The science of weights and measures is referred to as metrology.

The Government's policy commitment

The operation and the structure of the Australian Government Analytical Laboratories (AGAL) was the subject of a major review as far back as 2000 by the Department of Finance and Administration (DoFA) and the Department of Industry, Science and Resources (DISR). AGAL is a business unit within DISR. The key recommendation of the review was that AGAL should be linked to a national measurement institute.

The policy announcement for the creation of a National Measurement Institute, involving AGAL, the National Measurement Laboratory (within CSIRO) and the National Standards Commission was made on 13 May 2003 in Budget 2003-04. The Fact Sheet issued by the Department of Industry, Tourism and Resources on the Budget initiative for a National Measurement Institute includes the following comments about the proposal:

The demand for expertise in more than one type of measurement is growing in industry and in research. Some industries, such as the power industry, rely on three kinds of measurement services — physical, chemical and legal. New technologies such as biotechnology and nanotechnology require physical, chemical and biological measurements. Innovation in science and technology will also benefit from a better integrated measurement system.

Measurement is supported by the broader standards and conformance infrastructure. Conformance is the process of assessing whether or not the product or service meets a required standard. An efficient measurement, standards and conformance infrastructure, able to support Australian industry, is essential for international competitiveness and investment attraction.²

The Government's proposal to locate the single National Measurement Institute within the Department of Industry, Tourism and Resources is stated as being aimed at drawing upon 'a strong corporate support network' to enable better coordination with government policy objectives.³ It is the one-stop shop approach and the proposal is said to be welcomed by industry.⁴

The 2003-04 Budget initiative will see an allocation of \$3 million over the next two years from the resources of the existing agencies and the Department of Industry, Tourism and Resources to establish the National Measurement Institute.⁵

Press commentary

David McLennan writing in *The Canberra Times* of 27 November 2003, commented on the one-stop shop approach and said:

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Industry had been pushing for the agencies to be brought together so there was better coordination between them. The amalgamation would also create efficiencies and lift the agencies' profiles making it easier to market their services in Australia and overseas.⁶

McLennan also noted that the proposal would not change these agencies' functions and services although new positions of a Chief Executive and a Chief Metrologist would be created (as noted above, metrology is the science of weights and measures).

Australian Labor Party's comments

In a speech with the title 'Is smashing CSIRO the answer to the research funding crisis?' Senator Kim Carr, the Shadow Minister for Industry, Innovation, Science and Research noted the suggestions for the amalgamation of some of the CSIRO's strategic and applied research functions (such as rainforest research and forestry laboratories) with university research functions (i.e. basic research) and also observed:

Further, CSIRO has already been stripped of its measurement laboratories in order that the government can create a new National Measurement Institute within the Department of Industry.⁷

Senator Carr's concern on the broader issue of a perceived undermining of the funding mechanisms within research agencies was also reiterated in his Second Reading speech on the Higher Education Legislation Amendment Bill 2003 on 20 August 2003.⁸

Senator Carr also raised the issue of the delay in working through the recommendations of the 2000 review of AGAL in the Senate Estimates Committee on 12 February 2003.⁹ Senator Carr's questions were aimed at clarifying whether AGAL would be relocated to a national measurement institute within CSIRO.

Australian Democrats comments

Senator Lyn Allison, the Australian Democrats spokesperson for Health and Ageing, has raised questions in the Senate about the continuation of the CSIRO's work on international standards for ultrasound measurement and safety, especially in relation to foetal risks from diagnostic ultrasound. The answers given to Senator Allison include a confirmation from CSIRO that the National Measurement Laboratory will continue to maintain a standard for ultrasound power measurement after it becomes part of the National Measurement Institute in July 2004.

The answers also included the confirmation that further investigation into metrology and measurement traceability in medicine has been deferred by CSIRO pending the establishment of the new National Measurement Institute.¹⁰

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Main Provisions

Schedule 1—National Measurement Institute and Chief Metrologist

Part 1—Establishing the National Measurement Institute and the position of Chief Metrologist

National Measurement Act 1960

Item 1 repeals Part III of the *National Measurement Act 1960* (the Act). Part III currently provides the legislative basis for the National Standards Commission. A new Part III is substituted and it provides for the establishment of the National Measurement Institute within the Department of Industry, Tourism and Resources and the position of Chief Metrologist. The Chief Metrologist will be a public servant engaged under the *Public Service Act 1999*.

In its annual report for 2002-03, the National Standards Commission, which will be dissolved by this legislation, noted that it sees the proposed amalgamation 'as an exciting opportunity to increase the profile of metrology in Australia', as well as providing a central contact point for measurement advice and services. The Chair of the National Standards Commission, Dr Doreen Clark AM, stated:

In the coming year, the Commission will play an active role in the planning and implementation of the National Measurement Institute, and will be keen to ensure that the interests of its stakeholders and staff are fully recognised and accommodated in the new organisation arrangements.¹¹

The technical effect of **Item 1** is to dissolve a statutory authority and to transfer its functions to an executive department.

Item 2 repeals Part IV (the provisions in the Act dealing with the Executive Director and staff of the National Standards Commission) and Part V (the provisions in the Act authorising the National Standards Commission to receive and deal with Commonwealth appropriation).

Part 2—Moving functions and powers of the National Standards Commission to the Secretary and the Chief Metrologist

National Measurement Act 1960

Items 3 to 18 are technical amendments which largely change legislative references from the 'National Standards Commission' to the 'Secretary' and to insert relevant references to the proposed new position of 'Chief Metrologist'.

At present, the Act contains provisions at Division 4 of Part VA that enable the National Standards Commission to be a 'verifying authority' and to appoint other 'verifying

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authorities', as well as to allocate 'verification marks' that are used in connection with 'utility meters'. (Utility meters are instruments used to measure gas, electricity or water). The National Standards Commission Annual Report for 2002-03 states:

Utility meters are currently exempt from the provisions of the National Measurement Act, pending the establishment of agreed standards and procedures for metrological control.¹²

It is understood that progress is being made on agreed national standards for small water meters and the current exemption (at least for water and irrigation meters) may be lifted in the near future.

Items 19 to 38 are technical amendments to change legislative references from the 'National Standards Commission' to the 'Secretary' in connection with the power to appoint and, where necessary, take disciplinary action against a 'verifying authority'. Decisions taken under this part of the Act are reviewable by the Administrative Appeals Tribunal (see section 18ZK of the Act). **Item 39** adds a new section 18ZKA to enable the Secretary to appoint a Commonwealth, State or Territory officer to be a verifying authority (where the State or Territory agrees to the appointment).

Division 5 of Part VA of the Act deals with enforcement matters. **Items 41 to 43** replace references to the 'National Standards Commission' in sections 18ZM and 18ZN of the Act with references to 'Secretary'. **Item 40** is a redraft of subsection 18ZM(1) and the *Explanatory Memorandum* to the Bill (at page 10) specifically notes that, because it allows the appointment of a person who has coercive enforcement powers, it has been recast to comply with the test of the Senate Scrutiny of Bills Committee Report 4/2000. Those who can be appointed are from an appropriate class of persons who are subject to obligations dealing with accountability in connection with the use of such powers.

Item 44 is a recast of existing section 18ZW (compensation for damage to electronic equipment) of the Act to comply with the Office of Parliamentary Counsel Drafting Direction 2001, No. 15 (see page 10 of the *Explanatory Memorandum* to the Bill).

Part VI of the Act deals with miscellaneous provisions including the making of regulations relating to examination and approval of patterns of measuring instruments (section 19A). **Item 50** provides a transitional mechanism to protect the validity and continuity of regulations made before the changes made by this amending Bill.

Section 19AAB of the Act allows regulations to be made to specify the requirements and procedures necessary to be satisfied before a measuring device is taken to be in accordance with an approved pattern. **Items 51 to 54** make consequential changes to the references in the Act as well as provide a transitional mechanism to protect the validity and continuity of the regulations (see **Item 54**).

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Section 20 of the Act is the general regulation-making power in the Act. Under the existing section, a regulation is made that enables the National Standards Commission to charge a fee for certain official activities. **Items 57** and **58** recast the relevant provisions in section 20 to remove references to the Commission and clarify the circumstances under which fees may be prescribed by regulation.

Part 3—Moving the metrological functions of CSIRO to the Chief Metrologist

Science and Industry Research Act 1949

Section 9 of the *Science and Industry Research Act 1949* specifies the functions of the CSIRO. **Item 66** repeals paragraph 9(1)(g) which states:

- (g) to establish, develop and maintain standards of measurement of physical quantities and, in relation to those standards:
 - (i) to promote their use;
 - (ii) to promote, and participate in, the development of calibration with respect to them; and
 - (iii) to take any other action with respect to them that the Chief Executive determines;

This repeal removes this function from the CSIRO. The function will be moved to the National Measurement Institute by this legislation.

National Measurement Act 1960 (the Act)

Items 59 to **65** make consequential amendments to the Act to insert definitional and other references to the 'Chief Metrologist' within the National Measurement Institute, to recognise the relocation of the function previously performed by the CSIRO.

Part 4—Transitional provisions

Items 67 to **88** are conventional transitional provisions to facilitate the transfer of assets and records to the new National Measurement Institute. There are also protective provisions in this part of the Bill to ensure validity and continuity of relevant standards of measurement and guidelines pending the commencement of the amalgamated body.

Item 85 is a constitutional safety net to ensure that compensation is paid on 'just terms' by the Commonwealth where the amalgamation removes property in circumstances where compensation is required.

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Schedule 2—Technical amendments

National Measurement Act 1960 (the Act)

Items 1 to 4 are technical amendments that enhance some existing definitions in the Act (in subsection 3(1) of the Act) and to allow greater flexibility in the coverage of units of measurement which are the subject of guidelines issued by the Chief Metrologist under existing section 7B. **Item 5** is a simple legislative drafting correction to the Act.

Schedule 3—Amendment of regulations

National Measurement Regulations 1999

The table that accompanies the Notes on 'commencement' contained in the National Measurement Regulations 1999 reads as follows:

Table			
Year and number	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
1999 No. 110	17 June 1999	1 Oct 1999	
1999 No. 185	1 Sept 1999	1 Sept 1999	—

Item 1 and **2** remove any ambiguity in the commencement of the Regulations by specifying that the commencement of the Regulations is 1 October 1999.

Concluding Comments

The proposed amalgamation involves three broad and separate functions. One of those functions is performed by the National Measurement Laboratory within CSIRO. This laboratory is already a national facility and it maintains and develops Australia's national standards of physical measurement for mass, area, length, volume, time, voltage and light. Another existing entity is the National Standards Commission which administers Australia's legal metrology system and it provides testing and approval for the basic designs of measuring instruments for use in trade and commerce. The other agency to be included in the amalgamation, the AGAL, provides Australia with a range of chemical and biological measurement services, including support for key programs such as police forensic work, the Australian Customs Service, sports drug testing and food import standards.

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As a concept, the amalgamation of functions to provide a one-stop shop can offer efficiencies for government and industry. In certain circumstances, however, amalgamations of activities may see the erosion of the priorities of one particular function as it adjusts to the collective priorities of the newly amalgamated body. There is no suggestion that this will occur with the various aspects of weights and measures but the allure of a one-stop shop needs to be weighed against the possibility that it may inadvertently dampen any potential for innovation in one or more particular disciplines.

This concern is, perhaps, more relevant to AGAL which is an analytical laboratory and which is not necessarily involved in the science of metrology in the strict definitional sense, although it does participate in the development of international standards. To that extent, it is a little anomalous to have a "Chief Metrologist" responsible for the provision of analytical services in chemistry and biology.

The retention of AGAL within an executive department (as part of the National Measurement Institute) is also interesting when it is considered that it also provides independent analysis for law enforcement purposes. Conceptually, it would seem that it is also worth considering whether there are advantages for and against in placing such a function in a statutory structure that is outside an executive department. In the context of the overall review of its functions, AGAL had suggested that it become a statutory authority in its submission to the 2000 review of its operation and structure by DISR and DoFA.¹³

Endnotes

- 1 P. H. Lane, *Lane's Commentary on the Australian Constitution*, Law Book Company Limited, Sydney, 1986, p. 147.
- 2 The Fact Sheet on the Budget 2003-04 initiative is on the web site for the Department of Industry, Tourism and Resources at:
<http://www.industry.gov.au/content/itrinternet/cmscontent.cfm?objectID=BB889EC9-8DA7-418E-AD947343A1ED0C51> . The Minister for Industry, Tourism and Resources, Hon Ian Macfarlane MP, issued a Media Release on 13 May 2003, 'Measuring up to Industry Expectations with National Measurement Institute', which can be found on ParlInfo at:
<http://parlinfoweb.parl.net/parlinfo/Repository1/Media/pressrel/8IB960.pdf> .
- 3 The Hon Warren Entsch MP, Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Second Reading Speech, National Measurement Amendment Bill 2003, House of Representatives, *Debates*, 3 December 2003, p. 23546.
- 4 *ibid.*
- 5 The Hon Warren Entsch MP, Parliamentary Secretary to the Minister for Industry, Tourism and Resources, Consideration in Detail, Appropriation Bill (No. 1) 2003-2004, House of

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Representatives, *Debates*, 18 June 2003, p. 16917. See ParInfo at:
http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=787969&table=HANSARDR .

- 6 David McLennan, 'One-stop shop for measuring', *Canberra Times*, 27 November 2003, p. 11.
- 7 Senator Kim Carr, Shadow Minister for Industry, Innovation, Science and Research, 'Is smashing CSIRO the answer to the research funding crisis', Public Lecture, Roberston Lecture Theatre, Australian National University, 7 August 2003, p. 5.
- 8 Senator Kim Carr, Shadow Minister for Industry, Innovation, Science and Research, Second Reading Speech, Higher Education Legislation Amendment Bill 2003, Senate, *Debates*, 20 August 2003, p. 14064.
- 9 Senate Economic Legislation Committee, Consideration of Additional Estimates, Senate, *Debates*, 12 February 2003 on ParInfo at:
http://parlinfoweb.parl.net/parlinfo/view_document.aspx?id=71334&table=ESTIMATE .
- 10 Senator Lyn Allison, Senate, *Debates*, 'Health: Ultrasound Standards', 2 December 2003, p. 18771 and 'Health: Research', 15 September 2003, p. 15110.
- 11 *Annual Report 2002–03*, National Standards Commission, p. vi.
- 12 *ibid*, p. 10.
- 13 See Lynne Reeder, 'Mini-Report: The AGAL submission', *Australasian Biotechnology*, Volume 10 No. 6, November-December 2000, pp. 18–19.

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