

Submission:

Australian Standards form an increasingly important part of the regulatory framework for industry in Australia. Industry is presumed to know the law (including all the regulations and standards) and ignorance of it is no defence. Responsibility for compliance now extends to directors and managers, regardless of business structure (whether it be corporates, SMEs or sole traders). Increasingly criminal as well as civil liability is imposed.

With the sheer volume, complexity and growth in regulation in Australia this is an increasingly onerous responsibility. Fortunately (and perhaps ironically) Australia also has the world's first standard on regulatory compliance: AS 3806 Compliance Programs. A major defect in this Standard is that it overlooks the first and fundamental step ie to identify and understand the relevant laws, regulations and standards.

Given the onerous responsibilities cast upon industry, government also has a responsibility to make the regulatory framework efficient, effective and responsive. That includes making it well known and understood.

We submit that it is completely out of step with that responsibility to grant an exclusive licence to SAI Global to publish and distribute Australian Standards. The reasons include:

1. Given current communications technology, Australian Standards could and should be made readily and instantly available free of charge, just like all other laws and regulations. I am sure that academic publishers like Austlii.edu.au would be ready, willing and able to provide this service free of charge – just as they do with all other Australian laws and regulations. If not, there would be any number of other on line publishers out there who would jump at the chance to provide the service free of charge, just in return for the enormous traffic which it would generate for their sites.
2. The standard of publication by SAI Global is quite primitive by 2006 communication technology standards. It ought to include version control, marked up changes, key word searching and alerts.
3. The cost of purchasing Australian Standards from SAI Global is exorbitant given that communication and publishing technology enables this service to be provided for little charge and free if combined with a legal and regulatory portal.
4. Monopolies are the ultimate example of anti competitive and inefficient practice which the Productivity Commission has been formed to eliminate. Where they so adversely affect the efficiency and regulatory compliance efforts of every other Australian industry, they are indefensible.

The substance of this submission is relevant for all industries.

However, our particular interest is in regulatory compliance for the tourism, travel and hospitality industry. See eg Atherton TC&TA, (1998) **Tourism, Travel & Hospitality Law**, Law Book Co, Sydney (534 pages)

Atherton TC, (2006) **Current Issues in Tourism Travel & Hospitality Law (A review of the current issues including the challenges of regulatory compliance)**, Reform Vol 83, Australian Law Reform Commission.

The first was written inter alia, to make the laws better known and understood so as to assist industry compliance. Relevant extracts from the latter are set out below:

“Travel and Tourism affects and is affected by almost every economic, social, cultural and environmental consideration and accordingly is subject to and dependent upon the laws governing all these matters. In addition, there is a host of specific laws which regulate each aspect of this industry. Success for all stakeholders depends upon maintaining an efficient, effective and responsive regulatory and compliance system”

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“The old adage that everyone is presumed to know the law and the corollary that ignorance of the law is no defence is taking on a new significance for corporations, medium and small business in this industry. A number of legal developments are converging to make this a top of mind issue for management.

- Legislation imposing criminal sanctions and fines upon corporations and persons responsible or involved in breach of laws affecting all businesses including legislation on Tax, Corporations, Competition, Consumers, Discrimination, Privacy, Insolvency, Environment, Employment, Occupational Health & Safety;
- Common law developments “lifting the corporate veil” to expose directors and senior management of corporations to personal responsibility;
- Compliance programs in probation orders and in determining penalties for corporations and persons involved in consumer and competition law breaches under the *Trade Practices Act 1974 Cth*;¹
- Compliance program and reporting requirements under ASIC and ASX² corporate governance rules; and
- Elevation of the status of industry’s own “voluntary” codes of conduct to standards for compliance in civil and criminal liability.³
- Wider management responsibilities for due diligence, risk management, triple bottom line (performance against financial, social and environmental criteria).⁴

The challenge is especially daunting in Australia where, despite the efforts of the Office of Regulatory Review⁵ and similar agencies, the sheer volume, complexity and growth of regulation is overwhelming even for the enforcement authorities themselves.⁶ In the circumstances, to expect or demand perfect knowledge and compliance from citizens is unrealistic and unfair. Fortunately, Australia has also taken a leading role in addressing this problem by producing the world’s first Risk Management Standard in 1995⁷ and regulatory Compliance Program Standard in 1998⁸.”

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“Given the extent and detail of the regulatory requirements and the harsh consequences of breach, it is now difficult to survive and prosper in ... industry without an effective regulatory compliance program.”

¹ s86C, s87

² ASX Corporate Governance Council Principles particularly # 3, 7 and 10.

³ See eg *Trade Practices Act Cth 1974 Part IVB*, *Civil Liability Act 2003 Qld* s35 and case law

⁴ See eg WTTC 2002 *Corporate Social Leadership in Travel & Tourism* at <http://www.wttc.org/publications/pdf/CSLREPORT.pdf>

⁵ <http://www.pc.gov.au/orr/index.html>

⁶ Consider for example Australia’s legislation on core subjects such as tax, GST, employment and native title each of which is widely regarded as the most voluminous and most complex of its type in the world.

⁷ AS/NZS 4360 Risk Management

⁸ AS 3806-1998 Compliance Programs