



Supplementary Submission by the  
**Housing Industry Association**

Productivity Commission Inquiry into  
Standard Setting and Laboratory  
Accreditation  
Draft Research Report

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## Statement:

The enclosed submission has been prepared by the Housing Industry Association in response to the draft research report released as part of the Productivity Commission inquiry into Standard Setting and Laboratory Accreditation on 25 July 2006.

HIA represents the end users of Australian Standards and is therefore uniquely placed to provide guidance on ways to improve the quality and 'buildability' of Australian Standards.

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# Executive Summary

As a substantial end user of Australian Standards, the Housing Industry Association (HIA) is well placed to comment on the development, application and access to Australian Standards by the building industry.

While the comments made by the Productivity Commission in its draft report on Standard Setting are generally welcome, HIA considers that more reform is needed to engender renewed industry confidence. HIA recognises recent efforts by Standards Australia to improve the standards-making process, however remains concerned about:

- The proliferation of Australian standards, which add to the cost and complexity, and therefore the affordability, of building;
- The lack of rigorous transparent and robust processes within Standards Australia to determine clear justification for the development of any new or amended standards;
- The limited “gatekeeper” functions relating to standards that affect the building industry;
- Commercial pressures on Standards Australia to produce new standards;
- The costs and accessibility of industry standards; and
- The increasing trend of local governments, as well as the courts, to use voluntary standards furthering new regulation, or to dictate “best practice”.

HIA supports a number of fundamental reforms relating to the development and provision of Australian standards, including:

- **The process for initiating and developing standards must comply with COAG principles.** All standards referenced directly or indirectly in regulation must be subject to a transparent regulatory impact analysis, including a comprehensive consultation process. At the very least, this should be achieved by formal justification of the standard at the outset (ensuring that there is a genuine need for the new standard, or any amendment to an existing standard), together with transparent cost / benefit analysis using the federal government’s new Cost Calculator.

An external independent appeals process should be available at each key decision point in the development of a new standard.

- **New standards should be developed only in cases of genuine need.** HIA advocates the need for an independent third party “gatekeeper”, such as the Australian Building Codes Board (ABCB), to determine whether there is any need for new standards that relate to the building industry.
- **Standards Australia must accept a higher level of accountability for the development of standards.** A net public benefit must be clearly demonstrated prior to the development of any new standard. The justification, including related policy objectives, for a standard, as well as the results of any cost / benefit analysis, should be available for public review and comment prior to the development of the standard.

All drafts and associated Regulatory Impact Statements (RIS) or cost / benefit analysis should be available online, free of charge, to encourage industry and community involvement in the consultation process.

- **Limitation on any commercial incentive for the development of new standards.** There needs to be complete separation of the public good role from the commercial operations of Standards Australia. Given the Publishing and Licensing Agreement (PLA) between Standards Australia and SAI Global, the Australian Government should amend the Memorandum of Understanding (MOU) it has with Standards Australia to include a prohibition on production of

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any standards where there is not a clear, demonstrable need for the standard and benefit to the community.

- **Regulated standards must be readily accessible.** The entire text of all new standards, and any amendments to existing mandatory standards should be available online, free of charge.

Hard copies of standards should be available at minimal cost, as has been general practice with legislation.

- **De facto regulation of voluntary standards must be addressed.** Adoption of voluntary standards by local councils as regulation is unacceptable, particularly where those standards have not been subject to any regulatory impact analysis. Reliance by courts on voluntary standards or direction notes as examples of “best practice” should be prohibited.
- **Standards should be reviewed on a regular basis.** Any commercial commitment to increase the number of standards should be balanced by a requirement to regularly review the existing standards stock.

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# 1 Introduction

With a membership base of more than 43,000, including builders (large and small), developers, tradespeople, manufacturers and suppliers, and professionals such as architects, HIA is uniquely placed to provide comment on the practicality and content of standards. As a member of numerous standards committees, HIA also has direct experience with the standards development process.

Increasing regulation, including the proliferation of Australian Standards, takes its toll on the competitive position of the nation, limiting the ability of industry to generate product efficiently and at low cost. Australian Standards are increasingly being used in areas not originally perceived as their domain. The original intent of creating a level playing field for all operators in industry has been altered to accommodate the wish of regulators seeking to ramp up regulation. Local Government planning controls often quote standards (including voluntary standards) out of context, creating perverse outcomes. There is also some evidence of courts and tribunals referring to voluntary standards in trying to assess what a defendant “should” have done. In the context of the housing industry, such regulation has served only to escalate disputes and drive up housing costs.

The problem of regulation creep has become so prolific that all governments, via the Council of Australian Governments (COAG), agreed to urgently address the issue. The Federal Government has responded to concerns of mounting red tape by supporting reform of its own regulation making processes, in accordance with the recommendations made in the Banks Report. A study into Performance Benchmarking of Australian Business Regulation has also been commissioned. Meanwhile, Victoria, New South Wales and Queensland have initiated significant reviews of their regulatory processes. Victoria has introduced the Victorian Competition and Efficiency Commission (VCEC), while New South Wales has adopted the Office of Better Regulation (OBR) in the Premier’s Department.

HIA supports the COAG principles for good regulatory processes and argues that they should be applied to the development of all referenced standards. However, the current Standards Australia model and publishing agreement with SAI Global raises issues of conflict of interest and a flawed standards making process, where the decision to adopt or amend standards, and the appeals mechanism for those decisions, rests entirely with Standards Australia.

Standards intended to be adopted in regulation should only be proposed or amended in response to a clear and demonstrable need, after full consideration of all non-regulatory alternatives. It is apparent to HIA, which has a considerable history of involvement in the Standards Australia committee process, that a committee’s composition often determines the outcome of whether or not a standard will be adopted. There is a desperate need for adequate checks and balances to ensure that committees are not captured by commercial or secular interests.

HIA believes that there is a real need for increased stakeholder oversight to improve accountability in the standards development process. In the building industry, no standards should be developed without first being initiated by the Australian Building Codes Board (ABCB), in accordance with its mandate to develop a simpler and more efficient building regulatory system.

Given the increasing reliance being placed on standards by regulators, it is anomalous that this public good information is being sold for commercial gain. HIA maintains that mandatory standards must be available to the prime users and public at the lowest possible price, preferably free on-line and at minimal cost for hard copies, to promote compliance with building regulation and legislation. There are currently around 1,400 standards referenced either directly or indirectly through the Building Code of Australia (BCA). The cost of maintaining a current version of the BCA, inclusive of standards, is approximately \$1,300 annually.

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## 2 Response to Draft Recommendations

HIA has reviewed each of the draft recommendations in the Productivity Commission Draft Report on Standards Setting and Laboratory Accreditation, and would like to provide the following comment in relation to a number of matters.

### 2.1 Overall assessment and status of Standards Australia

**DRAFT RECOMMENDATION 5.1**

*The Australian Government should maintain Standards Australia's status as Australia's peak non-government standards development body and the role of the Standards Accreditation Board in accrediting other standards development organisations to make Australian Standards.*

#### Australia's peak non-government standard development body

HIA continues to question the value of the competitive advantage currently enjoyed by Standards Australia as Australia's peak non-government standards development body.

HIA maintains that further consideration be given to alternatives, and the possible benefits of opening up standard setting to greater competition. This position appears to also be supported by the Productivity Commission in its draft report where it, "endorses the need for standards writing in Australia to remain contestable. Providing choice in standards development organisations has the potential to facilitate innovation in approaches and processes and other efficiencies/cost savings."<sup>1</sup>

It is incongruous that the primary standards development pathways are either directly administered or overseen by Standards Australia. This should be genuinely opened up to facilitate industry developed standards.

### 2.2 Assessment: international

**DRAFT RECOMMENDATION 6.1**

*The Australian Government should, in conjunction with Standards Australia, improve the effectiveness of Australia's participation in international standard-setting fora by more clearly articulating the national interest objectives to be pursued. Australia's future participation must be focused on those international standardisation activities with the potential for the greatest net benefits for the Australian community.*

**DRAFT RECOMMENDATION 6.2**

*The Australian Government should, in consultation with Standards Australia, ensure the most appropriate expert representation in international standardisation activities and increase funding in order to address any financial barriers to such representation.*

**DRAFT RECOMMENDATION 6.3**

*Standards Australia should facilitate more direct participation by Australian consumer bodies on the ISO Committee on Consumer Policy and its working groups.*

**DRAFT RECOMMENDATION 6.4**

*The Australian Government should, through the Memorandum of Understanding, continue to require that in the development of Australian Standards there is a presumption in favour of adopting international standards, and that Standards Australia must publish the compelling reasons where an Australian Standard departs from an equivalent international standard. However, the suitability of such standards must continue to be assessed on a case-by-case basis by Standards Australia and by governments through their regulatory impact analysis processes where the Standards are to be referenced in regulation.*

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<sup>1</sup> Standard Setting and Laboratory Accreditation: Productivity Commission Draft Research Report, July 2006, page 72

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## Participation in international standardisation

Consideration of existing international standards for adoption in Australian standards is appropriate as long as it can be shown that the content or provisions contained within the international standard would provide a net benefit to the end-user and/or the community and operate at a minimum effective level. Standards should reflect Australian industry custom and practice, and should not stifle innovation. Simply adopting international standards because of their availability or to promote Australia's alignment with international provisions at the expense of local industry practice is unacceptable.

Robust, transparent processes of assessment by Standards Australia through comprehensive regulatory impact analysis must be adhered to, particularly where a standard is to be referenced in regulation.

## 2.3 Assessment: the standards produced and access

### **DRAFT RECOMMENDATION 7.1**

*Standards Australia's justification process for the development of new or amended standards and the setting of priorities should be made more transparent and robust including by the publication of reasons for decisions, the establishment of a more open appeals process, and ensuring that the primary decision criterion must be a net benefit to the community as a whole.*

### **DRAFT RECOMMENDATION 7.2**

*For standards that are to be referenced in regulation, a rigorous impact analysis must be undertaken by governments in compliance with the RIS requirements of the relevant jurisdiction (or COAG requirements for intergovernmental action). In order to best facilitate consideration of other regulatory and non-regulatory alternatives, RIS's must be commenced at the earliest practicable opportunity.*

*While the preparation and coordination of the RIS is the responsibility of the regulating government, Standards Australia should provide technical input and other information as required by the drafters of the RIS and where such input is substantial and additional to normal activities, be compensated accordingly.*

### **DRAFT RECOMMENDATION 7.3**

*Consistent with the fundamental principle of transparency and accessibility of legal requirements, the Australian Government, or other relevant governments, should fund Standards Australia to provide low cost access to Australian Standards referenced in regulations. The implementation of this recommendation will require further examination by the Australian Government of the current contractual arrangements between Standards Australia and SAI Global (under which SAI Global holds the exclusive rights to sell Australian Standards).*

### **DRAFT RECOMMENDATION 7.4**

*Given the cost of access to Australian Standards, the Australian Government, and other governments, should seek to minimise the number of referenced standards and, in particular, avoid unnecessary cross references to Standards which make it necessary to purchase multiple Standards documents.*

## Justification process

HIA strongly maintains that the justification process used by Standards Australia in developing new, or amending existing, standards is flawed or at best *ad-hoc*.

In the context of standards that relate to building and construction, it is crucial that the decision to make a standard be made at 'arms length' from Standards Australia to ensure there is a genuine need for a new standard, and that it is relevant and able to be built. An unnecessary standard can add significant costs to the building process for little or no benefit, ultimately impacting on the affordability of housing.



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The continuing commercial relationship between Standards Australia and its previous subsidiary, SAI Global gives rise to continued industry concern. The current Publishing License Agreement (PLA), entered into prior to the final “separation” of the two companies, arguably creates incentives for Standards Australia to develop unnecessary or inappropriate standards. While it would be difficult, if not impossible, for Government to interfere in the existing commercial agreement, which will continue until 2018, it remains the Government’s responsibility (given its endorsement of Standards Australia as the peak, non-government standards development body) to ensure that there are no inappropriate incentives for Standards Australia to encourage the creation of additional standards.

The MOU between Standards Australia and the Commonwealth should be amended to reinforce the importance of a proper initial justification process, including cost benefit analysis, for any new or amended standards.

Given the particular impact that standards have on the building industry, it is especially important that building standards are not developed without real justification. To this end, HIA has proposed that the recommendations of the Small Business Deregulation Taskforce (the Bell Report, 1996) be adopted in so far as they relate to the need for an independent third party to take responsibility for the decision to develop building standards.

The Bell Report recommended that Standards Australia should not have any involvement in the development of new standards unless invited by the Australian Building Codes Board (ABCB). This would address concerns that standards are developed to serve the commercial interests of Standards Australia and some businesses. The Bell Report recommendation has already been implemented in part so that the ABCB is now required to approve standards that are to be referenced in the BCA. However, HIA argues that the trend towards application of voluntary, and largely unjustified, standards by local government councils and the courts, together with the tendency for voluntary standards to be referenced *indirectly* in the BCA, requires a more stringent approach to building standards development.

The ABCB, as the existing “gatekeeper” of the BCA, should also perform the role of independent “gatekeeper” in relation to the determination of the development of standards for the building industry.

### **Transparent & rigorous standard setting, and appeal processes**

Standards Australia is self-governed with no independent appeals process. This creates a conflict of interest and a perception that Standards Australia is self serving. This perception clearly needs to be avoided so that industry and end users of Standards can be confident that the relevant checks and balances are in place.

Certainly more robust and transparent processes for checks and balances must be implemented and rigorously maintained, “to ensure that Australian Standards are only referenced where they are suitable and have been subjected to rigorous impact analysis by governments”<sup>2</sup>, as noted in the draft Productivity Commission report.

The MOU between Standards Australia and the ABCB outlines requirements for referencing of standards in the BCA. Under the MOU, all standards to be referenced in the BCA must undergo a comprehensive regulatory impact assessment by the ABCB to prove the need for the standard and to assess whether it provides a net benefit<sup>3</sup>. Standards Australia has traditionally “complied” with

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<sup>2</sup> Standard Setting and Laboratory Accreditation: Productivity Commission Draft Research Report, July 2006, page 68

<sup>3</sup> The MOU between the ABCB and Standards Australia states that the ABCB will not reference any standard in the BCA which does not fully accord with the ABCB’s *Protocol for the Development of BCA Referenced Documents*. The Protocol states that BCA referenced documents must comply with the requirements of the COAG – *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies*. The COAG

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this through the performance of an ad hoc cost/benefit analysis. The obligation to perform the full RIS was then left to the ABCB. HIA understands that Standards Australia has recently modified its standards development process to include the performance of a Preliminary Impact Assessment (PIA), a derivative of the cost / benefit analysis, for any proposed mandatory standards.

While HIA welcomes this as a step in the right direction, the reality of the standards process means that standards for which a PIA has been performed which are rejected by the ABCB may still be approved as voluntary standards (and consequently may be picked up by local councils or courts). HIA argues that a PIA should be performed on ALL proposed standards, and questions a system which approves a standard that a leading industry body, such as the ABCB, has refused.

HIA further recommends that the Productivity Commission review the PIA process to ensure that it is compliant with the cost / benefit requirements of the COAG principles in accordance with the Standards Australia and ABCB MOU, and that the process utilises the new Office of Small Business Cost Calculator which has recently been endorsed by the Federal Government in its response to the Banks Report on Regulation Reduction.

An independent, external appeals process should be available at all key decision points in the standards development process. An internal appeal process gives rise to warranted questions of conflict of interest, particularly given Standards Australia's obligations under the commercial agreement with SAI Global.

An appeal of a decision in the development process should be available at key stages of the development process. Once a standard reaches the Building Sectors Board, the standard already has considerable momentum behind it, limiting the reality of any appeal being successful. There is a real need for a way to "short circuit" the development process where it has become apparent that it is flawed. Implementing the option for appeal at key decision points would facilitate such an opportunity.

## **Funding of standards**

The costs of keeping up to date with standards, combined with the costs of primary legislation and regulation, are prohibitive. To maintain a current version of the BCA and its referenced standards can cost more than \$1300 per year.

Improving access to mandatory standards is a "cornerstone" principle to ensuring compliance with regulation and legislation. This in turn will benefit builders and the community. Similarly, the use of standards as informational and educational tools should not be restricted as a result of cost of purchase.

To this end, HIA supports the Productivity Commission's draft comments that, "all essential standards referenced in regulations be accessible at low cost or free of charge online"<sup>4</sup> and is in strong support to the draft recommendation 7.3 insofar as regulated standards are concerned. HIA appreciates that voluntary standards should be available at commercial rate.

HIA highlights the recent recommendation by the Victorian Competition and Efficiency Commission that regulated standards (referenced by the BCA) be available for "zero cost", given their significant public good and regulatory status. This is consistent with accessibility requirements for primary and secondary legislation. One way that this could be achieved is through standards that are referenced in regulation (including drafts and associated RIS) being available online, "free of charge", in a similar manner to that of State legislation.

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Principles in turn state that if it is proposed that a standard be adopted, the standard-setting body must first certify that the regulatory impact assessment process has been adequately completed.

<sup>4</sup> Standard Setting and Laboratory Accreditation: Productivity Commission Draft Research Report, July 2006, page 115

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HIA notes Standards Australia's recent announcement that it will provide access to standards on line via the *austlii* web service. Again, while this offers a step in the right direction, it fails to address the real problem of the purchase price of standards. The service will only allow a user to identify which standards are referenced in a particular piece of legislation. The service will not provide free access to the content of the standard.

While there may be certain exclusivity publication and distribution constraints due the current Publishing and Licensing Agreement (PLA) between Standards Australia and SAI Global, this must not be a barrier to supporting improved accessibility to mandatory standards. To do so, would only assist in the erosion of compliance with regulation. As previously suggested by the Productivity Commission's 2004 Research Study on *Reform of Building Regulation* (2004), there are various options worthy of serious consideration to solve such constraints with the current PLA, including:

- The Australian Government could pay SAI Global an appropriate royalty for the right to publish essential primary referenced standards online; or
- SAI Global could provide online access on a free subscription basis and then receive compensation from the Australian Government for revenue forgone (ie. based on the number of subscribers).

In order to avoid future copyright issues, HIA proposes that the Commonwealth amend its MOU with Standards Australia to include provision for a contractual agreement that would allow Standards Australia to develop standards on a consultant basis for the Commonwealth. Under that agreement, the Commonwealth could maintain intellectual property and copyright of the standards.

HIA notes that Australian Standards are currently available in hard copy version in state libraries. Another alternative approach to access could be the purchase by the libraries of online subscriptions to standards. A person interested in accessing those standards could then obtain remote access to the library system online, preferably free of charge, or for a minimal library fee.

Importantly, it is also the sheer volume of referenced standards which adds to the costs for members of the building and construction industry. The ABCB should review the BCA with a view to reducing the number of indirectly referenced standards. The Government should ensure that Standards Australia is prohibited from developing standards that refer to other standards within their content.

## **2.4 Assessment: governance and process**

### ***DRAFT RECOMMENDATION 8.1***

*Standards Australia should improve the balance of interests represented on committees by:*

- *increasing the participation of small business, consumer and other community interests;*
- *requiring sector boards to be more rigorous in ensuring appropriate balanced representation on technical committees, including by regular reviews of the composition of such committees;*
- *requiring all committee membership lists to state publicly not only the name of the nominating organisation but also the name of the company or entity from which members come; and*
- *improving complaint handling processes to deal with concerns about the lack of representational balance.*

### ***DRAFT RECOMMENDATION 8.2***

*Standards Australia should continue to adopt the consensus decision making model for the development of Australian Standards. Standards Australia should make the standards development process more accessible to the general public, including by:*

- *better promotion of public comment opportunities and guaranteeing minimum time periods for consultation; and*
- *making all significant documents and other information readily accessible via the internet.*

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**DRAFT RECOMMENDATION 8.3**

*Standards Australia should reduce barriers to volunteer participation on technical committees by adopting measures to reduce the cost of participation. In addition to the same measures necessary to improve efficiency and timeliness (see draft recommendation 8.4), Standards Australia should fund volunteers, particularly small business and consumer representatives not supported by their employers, for travel and accommodation expenses.*

**DRAFT RECOMMENDATION 8.4**

*Standards Australia must continue to improve the efficiency and timeliness of Standards development, including by:*

- *making greater use of independent experts to prepare early drafts of Australian Standards;*
- *reducing face-to-face meetings, including through better use of technology;*
- *increased use of partnering arrangements; and*
- *improving project management.*

**DRAFT RECOMMENDATION 8.5**

*Standards Australia should strengthen its formal appeals and complaints handling processes. Such processes must be robust, transparent and sufficiently independent and cover all grievances relating to any aspect of the standards development process, including appeals against decisions relating to the development of a new or amended standard.*

**Standards representation**

Any standards development body, including Standards Australia, must maintain and retain a high level of expertise and technical quality within their standards development personnel. This needs to be balanced to ensure that the membership of a committee does not predetermine the outcome.

In the case of Standards Australia, it is paramount that all participants within its technical standard committees are of the highest level of technical expertise and experience that is relevant to the particular standard being developed by that committee. The selection of specific volunteers (whether they are from industry, government, community, or other interest groups) must represent a good balance of the key stakeholders of the main end-users of that particular standard.

Operational matters need to be reconsidered to ensure the longevity of appropriate committee participation. In particular, there is a growing level of dissatisfaction within committee representatives due to:

- The excessive number of standards under development and the increasing workload for representatives as a consequence;
- The lack of robust and transparent due-process procedures for standards development, and
- The lack of recognition for the contribution that volunteers provide, (volunteers are not even provided with a free copy of the standard at the completion of the process.)

The sheer volume of work associated with the push for more and more standards has made it impossible for HIA and other industry bodies to be involved closely in all standards under development. The result has been, in some cases, standards which do not adequately reflect industry practice. In addition, the flawed standards development process, and the sometimes flagrant disregard for committee (and industry) opinion leads to dissatisfaction within committee ranks. As a consequence, HIA has reduced the number of standards committees on which it is represented from 68 to 37. Such representation consumes significant resources from industry bodies for little or no return.

The dilemma for HIA, and for industry more generally, is that it contributes valuable intellectual property in good faith to a private company which then uses the final product for generating

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revenue. There is no direct recognition of contribution or financial return to industry associations or their members for this participation and transfer of intellectual property.

HIA contends that greater gains would be made in improving the quality of technical committee participation by addressing the above processes and recognition issues rather than to simply pay volunteers for their travel and accommodation costs.

To this end, HIA would prefer no payment for its attendance at technical committees, but would welcome cheaper access to standards, or other direct benefits for the end-user. This would deliver greater value to HIA representation on Standards Australia committees, would assist its members in fulfilling their compliance obligations and provide a better result for the greater community.

HIA notes that simply providing payment to attend technical committees (via reimbursement of travel and accommodation costs) may even reduce the prestige and ethical value that has to date been placed on committee involvement. Representatives take pride in knowing that they have helped develop standards for the “greater good” of the community. Providing reimbursement may reduce the role to one where participation is influenced by the prospect of direct financial gain.

## **2.5 The future relationship between the Australian Government and Standards Australia**

### ***DRAFT RECOMMENDATION 9.1***

*The Australian Government should continue to support, with some reallocation of funding and possibly at an increased level overall, Australia’s participation in international standardisation activities, including:*

- *partial funding for Standards Australia’s membership of, and participation in, ISO and IEC and regional standardisation activities;*
- *partial, but increased, funding for industry participation in ISO and IEC meetings;*
- *support for involvement in a broader range of specified international fora; and*
- *full funding for participation by consumers in the ISO Committee on Consumer Policy.*

*In addition, support should be provided, through funding or in-kind support, for domestic standardisation activities, including:*

- *the secretariat of the Standards Accreditation Board;*
- *on a case-by-case basis, development of regulatory standards and input into the preparation of associated regulation impact statements; and*
- *enabling low-cost access to regulatory standards.*

### ***DRAFT RECOMMENDATION 9.2***

*The Australian Government should continue to use the Memorandum of Understanding (MoU) as the most appropriate instrument for setting out the basis for its relationship with Standards Australia. While the terms of the current MoU generally remain appropriate, some changes are necessary including to:*

- *give effect to many of the specific draft recommendations in this report;*
- *improve the clarity of the document and its objectives, in particular by better defining public interest activities;*
- *deal with the special requirements of regulatory standards; and*
- *require public reporting on an annual basis of its performance against the MoU obligations.*

## **Government involvement in standards development and the MOU**

HIA supports the Productivity Commission draft recommendations. Government needs to take a more active role in the standards development process to ensure that new standards are only developed where there is genuine need, and that the development of mandatory standards involves a robust and transparent process including the assessment of regulation impact and comprehensive cost / benefit analyses. Government needs to ensure that there are suitable resources and/or funding to maintain such rigorous processes.

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HIA strongly supports amendments to the MOU between the Government and Standards Australia, including an amendment:

- noting the importance of proper initial justification processes for any new or amended standards;
- specifying that Standards Australia should not develop building standards except at the request of the ABCB;
- requiring that a PIA be performed for all proposed new and revised standards;
- noting increased Government involvement in the process for development of mandatory standards to ensure greater robustness and transparency. HIA supports such involvement to be in the form of increased funding and monitoring;
- requiring comprehensive regulatory impact statements (RIS) for all standards that are to be referenced in regulation. The preparation of a RIS should be funded by the Government and coordinated by the department or agency responsible for the regulatory proposal that refers to the Standard, and Standards Australia should provide technical input and other information required by the drafters of the RIS;
- containing reference to key design principles for regulatory standards;
- including the requirement for regular review, say, every five years of existing standards. A clause, outlining that Standards Australia should use their best endeavours to reduce the number of standards on an annual basis may also be appropriate.

HIA agrees that the requirement for annual reporting on standards development is also crucial to ensuring that Standards Australia remains accountable.

## **2.6 Further considerations**

### **Reliance on standards by courts**

Australian Standards are not mandatory unless they are incorporated into law or called up in contractual arrangements.

Despite this, courts and tribunals increasingly accept a failure to comply with unreferenced standards as adequate grounds for a consumer complaint. In some cases, even unreferenced standards that have not been specified in the contract are relied on by the courts. Such standards are voluntary but have, in effect, been treated as grounds for action.

HIA believes that this use of standards by courts and tribunals is inappropriate given that unreferenced standards can be developed without public scrutiny or objective regulatory impact assessment. It is unreasonable to expect builders and contractors to be aware of unreferenced standards and to then have these imposed at a later date in the process by a court or tribunal.

**There should be a clear delineation between regulated standards which have a statutory law basis, and voluntary standards which have no effect at law, other than that which is applied in varying ways by individual courts and tribunals.**

The application of standards which are not referenced in the BCA creates industry confusion. HIA believes that courts and tribunals should only rely on standards that have been subject to regulatory analysis, and are referenced in the relevant BCA at the time of the works being carried out. No standing should be given to draft or latest edition standards that have not been adopted through the BCA.

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## **Regulation of voluntary standards by Local Government authorities**

HIA maintains increasing concern at the amount of regulation that is made by Local Councils. Such regulation is subject to no cost / benefit or RIS analysis, and in the case of the residential industry often has a significant impact on “buildability” and housing affordability.

As discussed previously, voluntary standards are currently not subject to any form of cost / benefit analysis. A proposed new mandatory standard which is rejected by the ABCB may still become a voluntary standard (despite its apparent deficiencies). Such voluntary standards are then available to be applied as law by local governments who, in seeking to manage their own risk, apply often untested requirements that may not be consistent with industry custom and practice.

Local councils should only be able to regulate where there has been adequate regulatory impact analysis, including cost / benefit assessment. The simplest way to do this would be for local governments to apply the Federal Cost Calculator.

Annual reporting by local councils to the state government on regulating should also be required. This would be in keeping with the COAG commitments made earlier in the year, and also with the new intergovernmental agreement for the ABCB.

## **Review of existing standards**

HIA understands that Standards Australia is in the process of reviewing over 2,000 of its existing standards stock which are more than ten years old. 542 standards have already been identified for possible withdrawal.

While HIA welcomes the move by Standards Australia to reduce the stock of standards, we note that many of the standards identified for potential withdrawal have in fact either been superseded by at least one (if not many) amended versions of the standard, or have been amalgamated with other old standards to form a new one. These standards should have been deleted long ago.

Where any new or amended standard is proposed, any standards that it would replace should be identified and deleted automatically upon the adoption of the new or amended standard. A new standard should not be developed if the old standard remains relevant.