



Wednesday, 11 October, 2006

Mr Robert Fitzgerald
Presiding Commissioner
Study into Standard Setting and Laboratory Accreditation
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Fitzgerald,

Commissioned Study into Standards Setting and Accreditation

The Property Council of Australia welcomes the opportunity to comment on the draft Productivity Commission report *Standard Setting and Laboratory Accreditation*.

This submission will not examine issues surrounding the National Association of Testing Authorities, but will respond to the recommendations outlined in the draft report concerning Standards Australia.

As the main organisation representing the owners and operators of buildings, and the clients of property service organisations, we have a keen interest in the performance of Standards Australia and its effects on the construction and management of buildings.

In response to concerns about the efficacy of the cost-benefit assessment of standards, the Property Council has commissioned Henry Ergas, of CRA International, to develop a model approach to regulatory impact assessment. A copy of his report will be provided with this submission.

The Property Council of Australia

The Property Council of Australia is the peak industry association for the property industry.

Our mission is to champion the interests of the property sector.

Our membership comprises the leading institutional investors, developers, financiers, owners and managers of investment property in Australia and is responsible for the lion's share of property investment in Australia.

In addition, the Property Council's members include all the major construction, professional, and trade services suppliers working within the property sector.

We therefore have a very strong and personal concern about the use and abuse of regulation as it applies to the property industry.

Response to Productivity Recommendations

The Voice of Leadership

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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.*

Supported. Standards Australia has strong experience in standards development. Changing to another organisation at this stage could prove to be a retrograde step.

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.

Supported. International standards should be adopted more frequently, if it can be demonstrated that they are appropriate for Australian conditions. This will make it easier for companies to operate across national borders.

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.

Supported. Australia should be properly represented on international standards committees to ensure that standards that are likely to affect companies working here are appropriate for Australian conditions.

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.

No position taken.

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.

Strongly supported. The Australian Government and its standard setting authorities should be working towards greater international harmonisation, so long as the national interest is not adversely affected.

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.

Strongly supported. A frequent criticism of Standards Australia from industry has been the lack of transparency and the potential for commercial influence in its development of Australian standards. Clear decision-making processes will help to assure stakeholders that appropriate decisions are being made.

However, while we agree that there must be a demonstrable net benefit to the whole community, the potential costs on individuals and companies should also be a significant decision criterion.

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, RISs 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.

Strongly supported. There is limited assessment of standards in the development stage and prior to a standard going to ballot. Standards that are likely to be referenced in regulation should be subjected to an RIS before going out for public consultation, and some attempt should be made to determine the potential cost implications.

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).

Strongly supported. Despite not gaining any direct benefit from owning copies of standards affecting the property industry, the Property Council is unable to gain access to them without purchasing them separately or as part of a suite of standards. This affects our ability to review new standards against their predecessors and to provide appropriate responses during the public review of proposed amendments.

As there is a frequent amendment cycle for regulated standards, the cost to practitioners, who have no choice but to purchase new standards, is significant.

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.

Strongly supported. It is very difficult for industry practitioners to keep track of the standards that affect them. The Building Code of Australia references approximately 150 standards. However, these standards have secondary and tertiary references to over 2,000 additional standards. The Australian Building Codes Board has been reviewing these recently to try to reduce the burden on industry, but more consolidation is needed.

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.*

Strongly supported. The composition of standards committees needs to change to ensure better representation. Standards Australia should limit the number of people on a committee who work for the same company, regardless of sponsoring organisation, as this is being used as a back-door approach to get large voting blocks pushing vested interests.

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.*

Strongly supported. The public consultation period should also include the release of the existing standard and a summary of the proposed amendments, so that stakeholders are able to respond appropriately to the new standard.

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.

Strongly supported. Standards meetings tend to run for a significant amount of time and frequently require travel. This acts as a disincentive for those in industry who may have the most useful experience becoming involved in standards development. Meetings that run for more than one day can interfere too much with a volunteer's business responsibilities, and make it very difficult for industry associations to be properly represented.

Many industry associations are not in a position to fund travel for their representatives on standards committees, which means that individual companies must be supportive of their employees' participation, or travel is not possible. Funding from Standards Australia would help to improve representation.

An alternative approach would be to use modern facilitation techniques to identify agreed amendments and to explore those areas which may be more contentious. This would result in standards being developed more quickly, which would make it easier for stakeholders to participate.

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.*

Strongly supported. The use of independent experts to prepare drafts (particularly if they are paid to do so) will help to ensure the development of better written and more logically structured standards. Standards committees could then operate as committees of review, rather than being responsible for writing each individual clause. It would speed up standards development, which can be painfully slow at times.

The other proposals listed above would help to reduce costs and facilitate participation by representatives and they should be implemented.

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.

Strongly supported. A robust appeals process would provide an opportunity for additional objectivity, by allowing individuals and organisations to identify concerns that may arise with the development process.

The ability of organisations to appeal against decisions made by Standards Australia or its committees ensures that natural justice is provided, delivering a much more democratic standards development process.

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.*

Supported. The Property Council recognises that Standards Australia will not always have sufficient funds to be fully represented on all relevant international committees. It is appropriate, therefore, for the Australian Government to subsidise Standards Australia for that purpose, as it is providing important support to regulators.

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.*

Strongly supported.

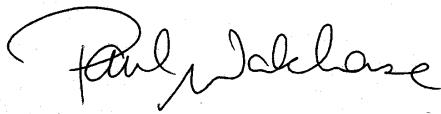
Contacts

Productivity Commission members are encouraged to contact the following Property Council staff, should they require further information:

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Yours sincerely,

A handwritten signature in black ink that reads "Paul Waterhouse". The signature is written in a cursive style with a large initial 'P'.

Paul Waterhouse
National Policy Manager

Attachments:

A1: Excerpt from Building Regulation Inquiry Submission 1

A2: Excerpt from Building Regulation Inquiry Submission 2

Making Regulatory Impact Statements more effective, by Henry Ergas

A1 Excerpt from Building Regulation Inquiry Submission 1

Referenced Documents

The Property Council supports the 2003 Memorandum of Understanding between Standards Australia and the ABCB with some caveats.

Clearly demonstrated need is the only acceptable basis for the creation of new standards to be inserted into the Building Code.

To date, the ABCB has been successful in applying benchmarks for adoption of standards, and the Property Council supports the continuing ABCB work of aligning Building Code referenced standards with New Zealand.

In the past, Standards Australia committees have sometimes suffered from a variety of highly undesirable traits including:

- capture by commercial interests;
- crucial absences of regulatory impact statements; and
- a tendency toward best practice rather than 'minimum acceptable' standards, as appropriate to the Building Code.

Many of these standards should therefore not be referenced by the Building Code.

Furthermore, standards that are not formally referenced by the Building Code should not be the basis for legal action against the industry.

Cases such as *Enzo Cardone vs Trustees of the Christian Brothers (ACT)* have shown what can happen with the inappropriate use of Australian Standards in legal cases. While that case was subsequently overturned, there is still potential for standards to be misused in litigation.

Some thought needs to be given to mechanisms for preventing such abuse of standards.

Recommendations

2. That the ABCB continue its scrutiny of Australian standards for reference in the Building Code.
3. That the Productivity Commission suggest mechanisms for preventing legal action being taken based on unreferenced standards or applied retrospectively.

A2 Excerpt from Building Regulation Inquiry Submission 2

The Property Council agrees that, if international standards are to affect regulation, they should be overseen by government. While this is not rejecting a role for Standards Australia International (SAI) per se, it is important to ensure that government, community, and industry interests are protected in the development of regulatory documents.

Similarly, we agree that there is a clear need for transparency and cost-benefit assessment of Australian Standards. The Property Council's suggestion is:

- A document should be developed that sets out a businesses case as to why the Standard needs to be revised and amended;
- A master document should be developed during the development of a Standard that shows what is being changed and the reasons for such a change;
- The new Standard and the old Standard should both be assessed against a theoretical building type to show what the potential cost increases may be and to demonstrate where the benefits may fall. The assumptions used in this verification should be provided, so that other people can assess the findings;
- All these documents should be released with the draft Standard during the public consultation period, so that stakeholders can properly consider the merits of the amended Standard.

This process allows an assessment of impacts, while stopping short of a full Regulation Impact Statement. Such an approach, we believe, will ensure that Standards are not being changed merely because it suits a particular industry's purpose, but because it is the most appropriate outcome for the good of the community.