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25 September 2006

Study into Standard Setting and Laboratory Accreditation  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616

Dear Sir/Madam

**Re: Comments on Productivity Commission Draft Report on Standard  
Setting and Laboratory Accreditation**

The comments provided in this paper are a preliminary assessment of the draft report. The submission is not intended to be a formal response by SafeWork SA.

**Occupational Health and Safety Regulators and their relationship with  
Standards Australia**

The Draft report refers to the extensive referencing of Australian Standards in Australian, State and Territory Regulations i.e. around 2400, which is almost a third of the published standards (pg 38). A number of these standards have been referenced under the occupational health and safety (OHS) legislation. While Australian Safety and Compensation Council (ASCC) was mentioned in the report as the OHS authority which has the power to develop national OHS national standards and codes of practice (which may incorporate Australian Standards), it is the occupational health and safety regulators (eg SafeWork SA in South Australia and similar agencies in all jurisdictions) which administer OHS legislation. Where Australian Standards (AS) are referenced in OHS legislation, the State or Territory OHS Regulators are responsible for the enforcement of the requirements of the AS.

Given that there is a significant number of standards referenced in OHS legislation, the OHS Regulators have a direct interest in the development of AS. Officials from OHS Regulators participate in a number of committees and working groups established to draft or review standards, particularly those referenced in OHS legislation. OHS Regulators, as do the majority of those who participate in committee work, pay for their own expenses in attending meetings and in this way indirectly fund the drafting of these documents.

## Copyright and accessibility issue

Regulators would want to see better accessibility of AS where they are referenced in legislation but this is limited by copyright provisions placed on AS. The commercial arrangement between SAI Global (as the publisher and vendor of the standards) and Standards Australia (as the copyright holder of standards) restricts the materials which can be reproduced by the Regulators. This interferes with State and Territory compliance strategies to make regulatory materials more readily available to the industry affected by the regulations. Government legislation such as South Australian Occupational Health, Safety and Welfare Act and Regulations and other information published by the regulators is freely available on the website. AS which are referenced in the legislation can only be accessed after payment of a fee.

## Minimum standard or best practice? (pg 105)

How this concept is measured is not always clear, but its implication is significant where a standard is used as a code of practice under the OHS legislation.

A code of practice (in South Australia, this is referred to as 'approved code of practice') may be an Australian Standard which has been approved or declared as a code of practice under OHS legislation. OHS legislation in each jurisdictions may define a code of practice slightly differently, however, it has a common purpose which is to provide practical guidance on a particular aspect of a legislative requirement.

Compliance with a code of practice is not mandated. However, non-compliance with a provision in a code of practice, which may be an AS, can be used as evidence of a breach in the statutory requirement, unless an *equal or better* means of achieving that requirement is provided by the duty holder. In this context, a standard is used as a 'minimum standard' when it is referenced as a Code of practice. If, however, a standard is drafted to incorporate the current state of technology or knowledge, arguably, it provides 'best practice'. There is therefore a conflicting requirement between a 'minimum standard' as required in a code of practice and a 'best practice' standard as may be drafted by the standard committee.

## Cross referencing of standards (pg 117)

On the issue of 'too many standards', the Draft report indicates that there are general concerns from the participants regarding the extensive use of cross referencing in standards. Draft recommendation 7.4 proposes that *'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'*.

Cross referencing of standards is part of Standards Australia's drafting policy, OHS Regulators have limited control over the drafting of standards and the cross referencing of standards when a standard is drafted. The fundamental issue seems to be *'Can an Australian Standard be complied with without complying with other relevant Australian standards?'* Committees drafting standards may have views on

this. Where there is a view that in order for a standard to be complied with, some related or relevant Australian standards must also be complied with, then those relevant standards will be referenced. This approach needs to be examined by Standards Australia. SafeWork SA is concerned that cross referencing of AS may defer regulatory development responsibilities to other non-representative committees or private organisations. The fact remains that cross referencing of AS gives legal effect to technical requirements which are not always known to the regulators or other stakeholders. A consequence of cross referencing is to add to the regulatory burden and potentially to the cost of compliance.

Yours sincerely

[signed]

Michele Patterson  
**EXECUTIVE DIRECTOR**  
**SAFEWORK SA**