

DRAFT REPORT ON STUDY INTO STANDARD SETTING AND LABORATORY ACCREDITATION

STANDARDS AUSTRALIA RESPONSE TO SUBMISSION FROM EWN PUBLISHING

Introduction

EWN Publishing has made a submission (Submission #DR183) in reply to the Productivity Commission Draft Report. The EWN Submission appears to be:

1. Alleging that Standards Australia has a virtual monopoly on standards setting in Australia;
2. Alleging that Standards Australia is acting in the private interests of SAI Global Limited rather than in the national interest;
3. Alleging that the Chairman of Standards Australia has a conflict of interest;
4. Complaining about Standards Australia receiving 'Government subsidies and fees';
5. Alleging secrecy for private gain, with the example of the Security Forum;
6. Proposing an access agreement under the Trade Practices Act;
7. Proposing termination of the publishing licence agreement between Standards Australia and SAI Global.

This Response Submission deals with each of these seven points.

1. Allegation that Standards Australia is a virtual monopoly

Standards Australia is controlled by its Members and Councillors (see Standards Australia Constitution and Membership Rules on the Standards Australia website at <http://www.standards.org.au/cat.asp?catid=25>) who elect:

- The Chairman;
- The Standards Australia Board; and
- The Standards Accreditation Board (except for one director appointed by the Standards Australia Board).

The Standards Accreditation Board has the power to accredit bodies in Australia to prepare Australian Standards.

Accordingly organisations that wish to develop standards for their members and for wider publication have four options:

- a) Prepare and publish their own standards;
- b) Obtain accreditation and then prepare and publish Australian Standards;
- c) Appoint Standards Australia to prepare Australian Standards under contract;
- d) Encourage and work with the traditional Australian Standards committee processes to have Australian Standards developed.

As succinctly summarised by the Productivity Commission in the Draft report pages 24-25, “a diverse array of organisations within both the private and public sectors is engaged in writing formal standards in Australia... Standards Australia has the sole right to issue, or accredit (via the Standards Accreditation Board) other organisations to write standards with the registered Australian Standards® trademark...”

Consequently, it is incorrect to describe Standards Australia as a 'virtual monopoly'.

2. Allegation that Standards Australia is not acting in the national interest

The EWN submission appears to allege (Page 1 paragraph 1) that Standards Australia and SAI Global operate “collusively ... for the gain of [their] staff, directors and owners... This is not in the public interest... Standards Australia describes its self as a national interest body. However its actions appear to show it's more of a private interest profit body, closely linked to SAI Global”. The submission returns to this allegation on Page 3, paragraph 4.

Following sale of its final shareholding in SAI Global in April 2006, Standards Australia and SAI Global are separate corporate and economic entities offering different but related functions in separate but overlapping markets.

Standards Australia maintains functional relationships with all certification and testing interests active in the standards and conformance infrastructure, inclusive of but not exclusive to SAI Global.

The only mutual obligations and exclusive arrangements remaining are those prevailing under the business sale agreements and associated long term Publishing Licence Agreement negotiated with SAI Global during the separation of the two organisations. The Agreement established the obligations and commercial terms for the future relationship between the bodies.

In addition, Standards Australia operates under its Memorandum of Understanding (MoU) with the Commonwealth Government. This MoU outlines and governs Standards Australia's responsibilities for considering and acting in the public interest.

Standards Australia has noted the Productivity Commission's Recommendation in the Draft report (9.2) that some changes should be made to the MoU to “improve clarity of the document and its objectives, in particular by better defining public interest activities”.

Standards Australia is happy to work with Government to implement such a Recommendation. However, Standards Australia stands by our activities over many years in representing Australia's interests in international standards setting fora and our very considerable output of highly reputed Australian Standards® to support our reputation for acting in Australia's public interest as the peak voluntary standards producing organisation in Australia.

3. Allegations that SA Chairman has a conflict of interest

The EWN submission at pages 2-3 alleges a conflict of interest, referring specifically to the Standards Australia Chairman.

John Castles is Chairman of Standards Australia. He is also a non-executive director of SAI Global (not, as alleged by EWN a 'non-executive chairman'), elected at a time when Standards Australia remained a significant shareholder. He is only one of a number of directors of SAI Global.

Standards Australia put in place a strict protocol to make sure that there is no conflict of interest as a result of his two roles. He does not participate in any deliberations by the Standards Australia Board about the relationship between Standards Australia and SAI Global.

Any shares that Mr Castles holds in SAI Global are a matter for him as an individual having regard to his role as a non-executive director of SAI Global. As he does not participate in any decisions or deliberations by Standards Australia concerning SAI Global, there is no conflict of interest in this shareholding.

4. Complaint about Standards Australia receiving Government subsidies and fees

Standards Australia currently receives Australian Government financial support of approximately \$2M per annum, which represents approximately 15% of its annual operating expenditure.

The Government funding received by Standards Australia, as noted in the Productivity Commission report, supports the organisation's membership and Australian expert and other representative participation in ISO/IEC and regional standardisation activities, undertaken in line with national interest obligations under the MoU.

Standards Australia augments this funding significantly to leverage and enhance the national interest benefit and value of this Commonwealth contribution.

5. Security Forum

The EWN submission at page 2 cites Standards Australia's recent activities relating to security issues as an example of acting with untoward secrecy. The circumstances referred to were as follows.

The Security Standards and Support Systems Project was developed to promote a framework for collaboration between the private sector, the Commonwealth Attorney-General, the Trusted Information Sharing Network and Standards Australia's National Centre for Security Standards. The object was to develop standards designed to assist the private sector in the protection of Australia's critical infrastructure.

The project aimed to address the stated role for Standards Australia in the *Critical Infrastructure Protection National Strategy* (Version 2, 12 March 2004). This role recommends that Standards Australia:

"Should promulgate standards on risk management, corporate governance, business continuity and security."

This recommendation flows out of the Business-Government Task Force on Critical Infrastructure report (May 2002) that recommended:

"The Commonwealth should develop models of good critical infrastructure assurance, taking into account relevant standards, in consultation with the private sector and the States and Territories."

The key outcomes for this project were to:

- Describe some of the issues, barriers and solutions related to protecting critical infrastructure;
- Identify the importance of standards to securing critical infrastructure;
- Identify and prioritise the standards required by the owners and operators of critical infrastructure;
- Identify the gaps between existing standards and the needs of the owners and operators of critical infrastructure;
- Make recommendations on how the gaps in standards may be addressed; and
- Develop a blueprint for the development of a security standards framework that may be useful in identifying and categorising security standards.

It is evident from the name: "Trusted Information Sharing Network" that industry comes together to share their experiences in confidence with other group members. All members of the group have been asked to sign an agreement to keep the information obtained from working in these groups confidential unless otherwise advised.

In conducting the project with the Attorney-General, the project leader signed such a confidentiality agreement.

As would be expected, Standards Australia was acting on the wishes of the Attorney-General and the members of the Trusted Information Sharing Network by having a closed feedback session. Additionally references in the feedback session were made to the Protective Security Manual which is a classified government document. Finally, in the interests of fairness, the participants in the project were given the opportunity in a small group setting to make comment on the draft report before it was made more widely available.

6. Access agreement proposition

The EWN submission proposes, as a solution, “a Trade Practice Act access agreement for Australian Standards and Guidelines”(pages 1 and 5). This proposition proceeds on the false assumption that Standards Australia is a 'virtual monopoly', which is incorrect (see section 1 above).

Also an access agreement such as is described could only be implemented if the Publishing Licence Agreement between Standards Australia and SAI Global was terminated (see section 2 above and section 7 below).

7. Termination of Publishing Licence Agreement proposition

The EWN submission implies that the licensing agreements between Standards Australia and SAI Global must be terminated.

The Publishing Licence Agreement between Standards Australia and SAI Global is a long-term agreement expiring November 2018. It is an integral part of the creation of SAI Global.

Accordingly SAI Global would be entitled to damages if Standards Australia unilaterally terminated the agreement.