

Consumers' Federation of Australia

Submission to the Productivity Commission Standards and Accreditation Study April 2006

Executive Summary

The Consumers' Federation of Australia (CFA) is the national peak body of consumer organisations. Representatives of the CFA have participated in the development of Australian standards for more than 20 years.

The CFA recognises that Australian standards play a vital role in Australia. Standards form part of our consumer protection system and encourage a dynamic marketplace.

Whilst there are a number of areas in which Standards Australia could improve their processes and be held more accountable by Government, we support the continuation of a single, independent standards body for Australia.

The CFA is extremely concerned about moves that would increase the domination of standards development by industry.

We are also concerned that the establishment of alternative private organisations to develop Australian standards will result in poor quality standards developed through processes that lack the rigour, transparency and inclusiveness of those used by Standards Australia.

We advocate greater Government involvement in the development of standards, particularly those in the public interest.

The Consumers' Federation of Australia

The Consumers' Federation of Australia (CFA) is the national peak body for consumer groups in Australia. We have over 100 members including legal centres, health rights groups, local consumer organisations and public interest bodies.

The objects of the CFA are to promote the interests of consumers, in particular low income, vulnerable and disadvantaged consumers, by:

- identifying areas in which the interests of consumers are being adversely affected
- advocating policy and law reform changes to benefit consumers;
- conducting consumer awareness and information programs;
- liaising with other consumer and community groups to advance the interest of consumers;
- facilitating consumer responses to government, industry and regulators where specific funding or resources are available; and
- doing other things to further the interests of consumers

The CFA is an unfunded organisation and the members of our Executive work in a voluntary capacity.

The Consumer Representatives on Standards Australia Committees Project

The CFA has participated in standards development for more than 20 years. Since 1993, the CFA has annually applied for and received funding from Standards Australia to manage the involvement of consumer representatives on Standards Australia committees. The CFA was informed that this funding was drawn from the Commonwealth grant-in-aid to Standards Australia, and as such had strict restrictions on its use.

From the annual project funding, a travel fund is made available from which to reimburse the basic expenses of consumer representatives attending meetings, including airfares, accommodation where essential, public transport and meals to a set limit.

In addition, a part time Co-ordinator is employed to manage the travel fund, make travel arrangements, reimburse expenses, recruit new representatives, interview, assess and nominate representatives to committees, induct and support representatives in their roles, publicise and circulate draft standards and other standards documents to consumers, and report regularly to Standards Australia.

The Project currently manages consumer representatives on 68 Standards Australia national committees and two international committees. These representatives are nominated by the CFA and act in line with the CFA objectives. Additional consumer representatives may be nominated to committees directly by other consumer organisations at the discretion of Standards Australia, and they have access to the travel fund managed by this project.

The following submission is written on behalf of the CFA. A number of consumer representatives who have participated in standards development over many years contributed their opinions to this submission, however the CFA has also encouraged individual consumer advocates to make their own personal submissions.

The Role of Standards

In line with the Kean Report and the Issues Paper for this study, the CFA recognise 4 specific roles that standards play in Australia.

1. Standards can provide a basis for orderly commerce across jurisdictions
2. Standards can provide technical harmony
3. Standards can be used to indicate levels of safety and, when referenced in legislation, standards can provide consumer protection
4. Standards can be used by businesses to obtain a competitive advantage in the marketplace, by indicating their accreditation to a certain standard.

In order for standards to play any or all of these roles, it is essential that the standard be well respected in the relevant community. The reputation of a standard is dependant on the quality of the document itself, the quality of the process used to develop the document, the process of initial accreditation, and the quality of ongoing assessment and accreditation.

In relation to mandatory standards, the strength of the standard as a mechanism for consumer protection is also dependant on the enforcement of that standard. From the perspective of the CFA, a lack of enforcement continues to be a weak link in this method of consumer protection.

Voluntary standards are a means of industry self-regulation. As with all self-regulation, consumers will only benefit in industries with strong markets forces. In industries where there is market failure, some level of government regulation is required to provide adequate consumer protection.

Standards Australia's role in the development of standards

Standards Australia has developed a wealth of knowledge and expertise in the development of standards. Their Standards Mark is recognised by consumers as a sign of quality and safety. The presence of the Standards Mark enables consumers to make considered purchasing decision, based on a belief that the product or service carrying the mark is of a high quality.

The CFA supports the continuation of a system in which a single body works to develop standards for Australia. Whilst we recognise that the processes used by Standards Australia could be improved, we support the fundamental approach they take.

Standards Australia actively pursues the consensus model of standards development. Their policies support participation by people representing as many varied positions as possible, although their attempts to form well-balanced committees are not always successful. Whilst Standards Australia are very committed to protecting the process from hijacking, some industry groups have been known to use the committee process to advance their own interests at the expense of consumers and against the public interest.

The CFA is concerned that Standards Australia is moving towards greater partnership with industries seeking to develop standards as a means of self-regulation. A system in which the industry that stands to benefit financially from a particular standard is responsible for financing and writing that standard, would be disastrous for consumers. We see major dangers in the financing of particular standards by the industries that these standards purport to regulate, where people with products to sell are charged with the responsibility of deciding the parameters for those products. Some government or independent control of the process must continue, particularly in areas where the market itself will not ensure consumers are protected.

The CFA is concerned that Australian governments continue to pursue an agenda of deregulation. Self-regulation in areas of market failure provides no protection for consumers. It is the view of the CFA that such areas must become, or continue to be, the subject of government regulation. The CFA and other consumer organisations welcome the opportunity to contribute to further discussions around this issue, including the process of determining which markets are failing consumers.

Standards Australia supports and encourages the effective participation of end-use consumers in the standards development process. Whilst the CFA and Standards Australia disagree frequently on the means of achieving adequate consumer participation, the CFA knows that we have a place at the Standards Australia table. No one can deny

that improvements can be made to the current system of standards development, however it is vital that any changes incorporate the active participation of consumer advocates.

At this time, Standards Australia actively supports the participation of end-use consumers in the development process. We seriously doubt that industry groups will enable this level of transparency, access and support for consumer participation in their processes.

The work of Standards Australia technical committees

For a technical committee to develop a high quality standard in reasonable time, the committee needs to be well balanced, members should be active participants, the Chair must be impartial and effective in their role, and the Project Managers must be efficient and effective in theirs.

The effectiveness of any committee meeting is very much dependant on the Chair. In the opinion of consumer representatives who have participated on committees for many years, the quality of Standards Australia committee Chairs varies considerably. Some Chairs appear to have difficulty controlling the balance of input during meetings, allowing the stronger power bases of some industry groups to override alternative views. Other Chairs have shown considerable strength, to the extent of dissolving a committee that was not working effectively, and reconvening with a new, better-balanced constitution. The CFA would like to see greater levels of training and professional development for all committee members and particularly Chairs. Stronger oversight of the work of individual Chairs by Standards Australia would also be of benefit, incorporating a system of regular performance reviews.

The quality of work of the Standards Australia Project Managers also varies. From the perspective of the CFA, the best Project Managers communicate regularly with committee members, provide an introduction to the committee and its work for new members, ensure minutes of meetings are circulated within a couple of weeks of a meeting, and take any necessary steps to ensure the committee has a balance of opinions. Unfortunately the turn-over of Project Managers has been very high in the past few years, and it appears that they are carrying the work of too many committees. Some committee work does not get done between meetings, and Project Managers appear to be frequently apologising for their delay in getting to these tasks. In one example, the minutes of a meeting held in February were finally distributed the week before the next meeting in August. Whilst Standards Australia is aware of these staffing issues, we would like to see them review their workload strategies and make the necessary changes to ensure Project Managers have sufficient time to cover all of their committees adequately. This may require the employment of more people, or the decision by Standards Australia to undertake fewer projects each year in order to manage those projects very well.

There is no doubt that the consensus model of development can take more time than other models, however the CFA continues to support consensus as the best means of protecting the interests of all stakeholders, including consumers. If a single committee member strongly holds a position in opposition to the majority, the process will necessarily slow down. For some time, the CFA has had concerns that Project Managers and their supervisors are assessed on the timeliness of their standards development to the extent that some feel pressure to push through a majority decision rather than take time to resolve such a situation. It is important that the organisation developing Australian

standards does not take short cuts in the interests of profit. This is a further reason why we do not support the transfer of responsibility for standards development to a commercial organisation. Consumer representatives are just as frustrated as others by the lengthy timelines for standards development, however we would support improved efficiencies in the system in preference to the creation of a system that seeks financial outcomes based on the quantity of standards developed rather than the quality.

It should also be recognised that the slow speed of standards development is not entirely the result of the consensus model. The lack of work between meetings by some committees and the overloading of Project Managers also appear to be real factors. For example, a new method of standards development based entirely on electronic communication was proposed in 2005. The CFA nominated a representative on 1 March 2005 and some introductory documents were circulated in June 2005. Since that time there was no action for the committee until a new project manager was appointed and the initial documents were recirculated on 4 April 2006.

Over the years, the deceptively simple process of standards development has become surrounded by a complex bureaucratic support system. The system becomes even more complex when international standards are considered. One of the major barriers to effective participation by consumers has been the difficulty we experience navigating the system. Standards Australia staff are the gatekeepers to the system and, whilst we do not suggest that it is intentional, on some occasions consumer representatives have had great difficulty obtaining the necessary information and access to be effective participants in the process. The CFA would like to suggest that Standards Australia increase the level of communication to all committee members about their processes, including a “Who’s Who” at Standards Australia and plain English information about international standards development. The Consensus Builder website could be updated to incorporate such information.

International standards development

A key component of the relationship between Standards Australia and the Australian Government is in relation to international standardisation. The CFA agrees that it is important for Australia to participate in the development of international standards, and to adopt international standards where appropriate. Clearly consumers who purchase a camera made in Germany should be able to buy a replacement battery in Australia and, if possible, consumers would like the choice to buy a cheaper battery made in China. We see the need to balance two objectives in this regard. Firstly, standards should be in place in Australia to protect consumers from poor quality or dangerous products, including those imported from overseas. Secondly, standards must not be used to unreasonably restrict the importation of goods that may be cheaper or more suitable for consumers.

The balancing of these two objectives needs to happen on a case-by-case basis. In situations where consumer safety is at risk, where an Australian standard provides sufficient safeguards but the international standard does not, it is important that either the Australian standard is adopted or the international standard is modified before adoption. Unfortunately there is often a great deal of pressure on committee members to adopt an international document unchanged, largely due to the process imperative to publish a document within a reasonable time.

Deciding where to draw the line between these two, sometimes competing, objectives must be very difficult. Perhaps this is an area where the Government could provide advice to Standards Australia, based on the views of the stakeholders involved.

Given the growing importance of international standards to Australian consumers, the CFA has, for a number of years, endeavoured to have direct access to ISO and IEC committees. The cost of international participation, as well as difficulty navigating the Standards Australia and international bureaucracies, has limited our involvement. It is also difficult to find a consumer representative willing and able to be absent from work and to travel for a number of days.

The CFA agrees that it is necessary for Australia to be represented internationally by one body, and we have no objection to the continued recognition of Standards Australia in that role. We would, however, like this international involvement to be more transparent and accessible to consumer advocates, and we would willingly participate in discussions about how this may be achieved in practice.

The role of the Australian Government

The CFA supports policies that are in the national interest and in the public interest. We place particular importance on policies that strengthen consumer protection.

It appears that the Australian Government is looking to pursue alternative means of regulating a number of industries and activities. The CFA is opposed to self-regulation of industries where market failure would leave consumers at risk. It is important that the Government closely considers the potential impact of self-regulation on consumers, and consults consumer organisations when assessing this impact.

Where the decision is made to enable self-regulation through the development of industry standards, it is vital that end-use consumers are active participants throughout all stages of development. The level of transparency, access and support for consumer participation currently provided by Standards Australia must continue to be the minimum requirement.

Standards Australia and the Australian Government are also looking at alternative models of standards development. The CFA is concerned that private commercial standards development organisations would be susceptible to competitive forces and a commercial imperative, leading to a weakening of the quality of Australian standards. We are also concerned that such organisations would not meet the minimum requirements of transparency and access in their processes. For example, the Australian Forestry Standard was developed by an organisation separate to Standards Australia. All environmental organisations in Australia have strongly criticised the standard. They purport that the process was flawed and lacked the effective participation of environmentalists and indigenous representatives. The Interim Standard has been adopted by large timber companies but is not supported by the wider environmental community. Standards Australia must decide whether to formally recognise the document as an Australian Standard.

As previously discussed, the CFA is opposed to any movement towards the development of industry standards by the industries themselves, and the proposed financial partnerships between industry bodies and the organisation developing their standards.

It was recognised in the Issues Paper that many standards that operate in the national interest are not financially beneficial for either Standards Australia to produce or industries to fund. It is clearly the responsibility of the Australian Government to ensure that these standards are developed, and that they are of a high quality.

There are also many standards that operate in the public interest, which would not be financially beneficial to produce. The CFA has concerns about the future of these standards. A standard that will not sell many copies, and which does not serve to benefit industry interests, will not be attractive to either party to fund. Standards Australia proposes that they will continue to develop these standards, even when a loss would be incurred. It is important that the Australian Government takes steps to ensure that public interest standards continue to be developed, maintained and implemented. This might be achieved through a strengthening of the MoU with Standards Australia, or through the funding and oversight of an alternative standards development body that fills this vital role. Such a body might operate in a similar manner to the Food Standards Authority (FSANZ).

Other points

In this submission we have elected to avoid the well-known but continuingly important issue of funding for representatives. We understand that the Productivity Commission is aware of these issues, however it is important for us to make a couple of points.

The quality of a standard is directly related to the skills and participation of those people who write the document. The financial cost of participation on Standards committees continues to rise, despite the moves to electronic communication. Indeed it is now essential for representatives to have access to high-speed internet services in order to participate on committees. Anecdotally it appears that smaller businesses are feeling the need to reduce their participation on committees. Environmental and other non-government organisations can rarely afford to send representatives to many meetings. There is a danger that standards will predominantly be developed by major companies.

Since 1993, Standards Australia has consistently funded consumer participation on their technical committees. Being able to reimburse the airfares and accommodation bills of consumer representatives makes possible to find people willing and able to take on these roles. Unfortunately we cannot pay them for the day they take off work, nor for the internet download charges they incur.

It is important that Standards Australia better recognise their volunteers. There is a significant difference between the benefits of committee participation experienced by an industry representative and by a consumer representative. Both act as volunteers to Standards Australia, in that Standards Australia receive the benefit of their input but neither is paid by Standards Australia. An industry representative is usually an employee of a company, or is self-employed in the industry. Through their participation they experience professional development in their field, create networks and obtain some competitive advantage for their company. A consumer representative usually forgoes a

day of paid work, although some are retired people, they often participate in an area of personal interest rather than professional, and the benefits they obtain are for consumers generally, not for themselves in particular.

Clearly it is difficult to know where to draw the line in terms of funding and support for committee representatives in order to ensure fairness, however the point must be made that the current level of funding for consumer participation should act as an absolute minimum going into the future. The CFA suggests that one role of the Australian Government would be to ensure adequate funding to enable broad participation and balanced input to standards development.

A further point we would like to make is in regard to the cost of purchasing Australian Standards. Contractual agreements currently ensure that SAI Global is the beneficiary of the work done by volunteers to Standards Australia. Concerns have been expressed that representatives contribute their intellectual property to the standard, yet are not permitted to make a copy of sections of the document available to their members, even when properly cited.

It is also of concern that the published standards are priced beyond the means of many community organisations. This is of particular concern when the standards are referenced in legislation and are effectively mandatory. In contrast, legislation and regulations are available freely on line.

NATA

The CFA has a representative on the NATA Council. They have observed significant improvements in the efficiency of NATA processes in recent years, and we understand NATA to be a well-managed organisation that is accountable to their stakeholders.

The CFA supports the continuation of NATA as the single Government endorsed laboratory accreditation body.

Summary

Australian standards play an important role in Australia, and Standards Australia has managed the development of these standards for many years. We recognise that there are a number of areas in which Standards Australia could improve their processes and be held more accountable by Government, however we support the continuation of a single, independent standards body for Australia.

The CFA is opposed to policies that would provide industries with even greater influence on the contents of the standards that control them.

We are concerned that standards in the public interest will not be sufficiently attractive for Standards Australia to develop in the future, and we advocate greater Government involvement to ensure high quality public interest standards continue to be developed.

The CFA welcomes the opportunity to contribute to this study, and we look forward to further discussion of these important issues.