



Submission by the
Housing Industry Association Ltd

to

**The Productivity Commission Inquiry into Australia's
Standards and Laboratory Bodies**

April 2006

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Statement

The enclosed preliminary submission has been prepared by the Housing Industry Association in response to the Productivity Commission Inquiry into Australia's Standards and Laboratory Accreditation Bodies.

The submission is intended to present a collection of thoughts and ideas from the housing industry to promote discussion, and which may assist the Productivity Commission in the conduct of their inquiry.

The submission predominantly centres on those standards and processes associated with regulation. The level of regulation impacts on housing affordability.

ABOUT HIA

The Housing Industry Association Limited (HIA) is Australia's peak residential building industry organisation representing in excess of 42,000 businesses.

HIA members include builders and building contractors (residential and commercial), consultants, developers, major manufacturers and suppliers.

HIA members build over 90% of Australia's housing stock.

EXECUTIVE SUMMARY

HIA is concerned by:

- The proliferation of Australian standards, which add to the cost and complexity of building;
- The process by which standards are developed. There is obvious potential for Standards Australia, and also industry participants, to abuse standards for commercial gain;
- Commercial pressures placed on Standards Australia to produce new standards through its arrangements with Standards Australia International Global (SAI Global);
- The costs to industry of obtaining standards; and
- The trend towards increasing reliance by courts and tribunals on treating voluntary standards as effectively mandatory regulations.

HIA supports a number of reforms relating to the development and provision of Australian standards. HIA advocates the following:

- New standards should be developed only in cases of genuine need. This could be achieved by giving an independent third party, such as the Australian Building Codes Board (ABCB) or the Office of Regulatory Review (ORR) a greater role in the decision to create new standards;
- A complete separation of the public good and commercial operations of Standards Australia and SAI Global. To this end, government should consider in this review the relationship between Standards Australia and SAI Global;
- Standards or regulations referenced directly or indirectly through the BCA should be subject to a transparent cost/benefit and regulatory impact analysis in accordance with the COAG Principles;
- Standards Australia must accept a higher level of accountability for the development of standards, ensuring appropriate cost/benefit analysis and public consultation. This should include a formal application process for new or amended standards, a requirement for detailed justification by those proposing the standard, and the use of a recognised costing tool, such as that developed by the Office of Small Business and endorsed by COAG;
- Interested parties / industry groups should be able to register their interest in any new standards or amendments. They could then be notified electronically of any public comment periods, and the introduction of any amendments or new standards;
- All public comment periods, amendments, or new standards should be advertised by Standards Australia;
- All drafts for public comment, and all associated Regulatory Impact Statement (RIS) should be available online free of charge;
- The entire text of all new standards, and any amendments to existing standards should be available online free of charge;

- Hard copies of standards should be available at no more than marginal cost, as has been general practice with legislation; and
- Compliance with a standard should be a defence in court and tribunal proceedings. Reliance on standards that are not referenced in regulation or agreed as part of the contract should be prohibited.

INTRODUCTION

The Housing Industry Association (HIA) is concerned by the escalating costs and uncertainty stemming from the proliferation of Australian standards in the building and construction sector.

In the last decade, over 5,000 standards have been published, bringing the number of current standards to more than 6,800. More than a third of these standards are mandatory in one or more jurisdictions. Standards in the building industry become regulation through referencing in the Building Code of Australia (BCA). Around 200 standards are referenced directly in the BCA, with another 1,200 referenced indirectly.¹

Although many standards are mandatory, or are enforced as such by courts and tribunals, the process for developing standards generally lacks the usual safeguards of Commonwealth government regulation-making.

HIA is alarmed that Standards Australia's commercial relationship with its previous subsidiary, Standards Australia Global (SAI Global), creates perverse incentives to develop unnecessary or inappropriate standards. Standards Australia appears to be a 'publish or perish' organisation.

HIA suggests that the principles for good regulatory processes endorsed by the Council of Australian Governments (COAG) should be applied to both standards development and product certification processes.

Given the increasing reliance being placed on standards, it is anomalous that this public good information is being sold at commercial rates. HIA believes that standards should be available to the public at the lowest possible price, preferably at marginal cost for hard copies and free on-line.

AUSTRALIAN STANDARDS

Standards Australia – an overview

Standards Australia is recognised, by way of a Memorandum of Understanding (MOU) with the Commonwealth, as the peak non-government body for developing Australian standards. Standards Australia began as a publicly funded body with the mandate to produce standards for the public benefit. It has now evolved to a private business with Commonwealth Government imprimatur.

Over time, Standards Australia has come under scrutiny for its lack of transparency and accountability. In 1995, the Federal Government's Kean Report highlighted the need for a more rigorous approach to the drafting of standards. The report recommended a clear separation of the public good and commercial activities with standards.

Following the release of the Kean Report, Standards Australia divested its shares in its commercial arm, Standards Australia Quality Assurance Services (now SAI Global). However, this structural separation is incomplete. It is understood that SAI Global, which sells standards, requires Standards Australia via an MOU to produce

¹ Standards and Accreditation: Productivity Commission Issues Paper, March 2006, page 3.

or review about 500 standards per year (about 7 per cent of stock). Unfortunately, as the MOU between Standards Australia and SAI Global is not available, the nature of the commercial links between the two companies is unclear. The obligations placed upon Standards Australia by SAI Global defeats the purpose of establishing two separate companies.

The 'publish or perish' commercial impetus for Standards Australia to develop and review standards needs to be addressed. The pressure placed upon Standards Australia by SAI Global raises considerable concern, especially given the special status that has been conferred on Standards Australia through its MOU with the Government.

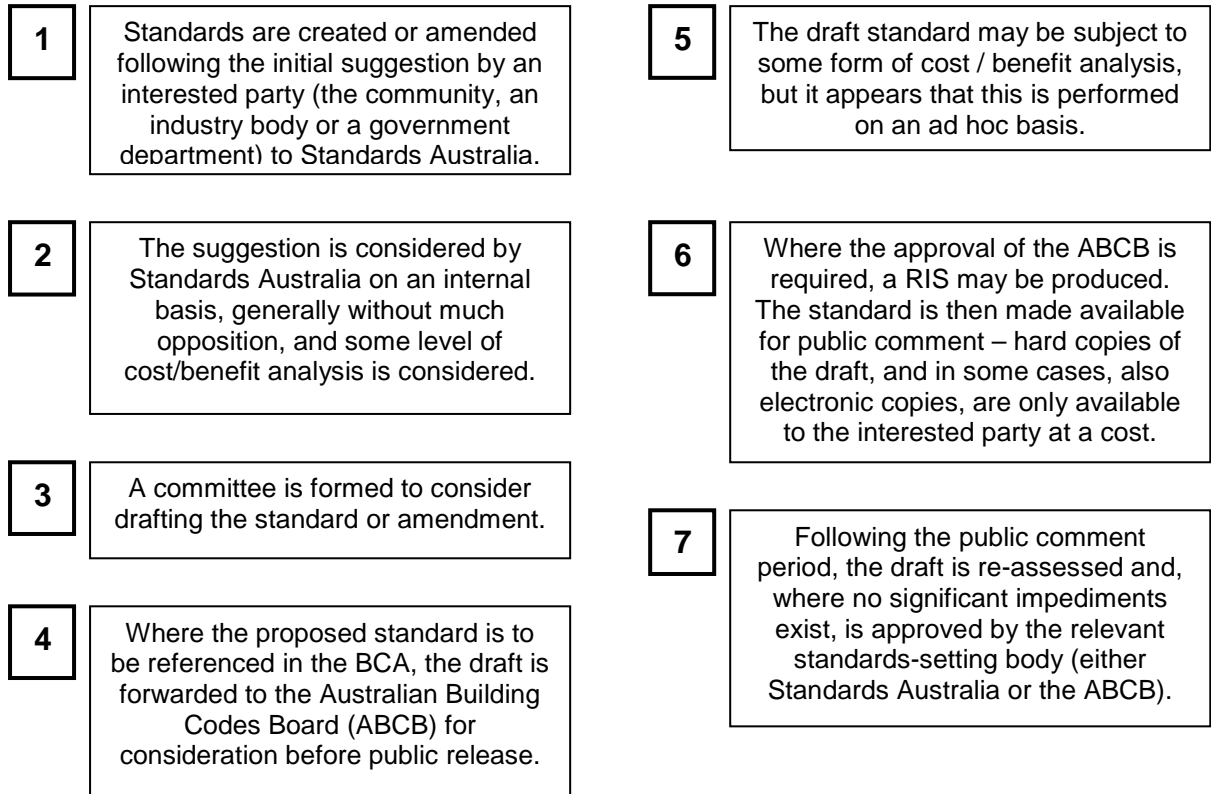
HIA questions the value of the monopoly and competitive advantage currently enjoyed by Standards Australia and recommends further consideration be given to alternatives, including benefits and disbenefits of opening up standard setting to competition.

HIA believes that increased Commonwealth involvement in the standards development process is essential to ensure greater transparency, and to avoid the perception of self interest. This could be in the form of increased funding and monitoring of the standards drafting and RIS process.

HIA suggests that the Standards Australia business model should be reconsidered in the context of Standard Australia's Memorandum of Understanding with the Commonwealth Government.

Development of standards

Australian Standards are developed according to a complicated process that ostensibly includes numerous safeguards:



Despite this process, standards can be developed without appropriate industry consultation or cost benefit analysis which would establish *prima facie* the need for a new or amended standard. The critical decision to develop a standard is made “in-house” and without a requirement for an open process to assess the need for a standard.

There is no formal requirement for government or other parties to be consulted, except in the case of a referenced standard for the ABCB. In the case of a referenced standard, a regulation impact statement may be produced.

Standards Australia has a Memorandum of Understanding with the ABCB for referencing of standards in the BCA. Unfortunately the procedure for standards development outlined in the MOU is not always followed.

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 assess whether it provides a net benefit². The draft RIS, together with

² 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 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.

an exposure draft of the relevant new or amended standard, are to be released for public comment. The Office of Regulatory Review (ORR) in the Productivity Commission assesses the adequacy of the final regulation impact statement.

This approach partly implements a recommendation made in 1996 by the Small Business Deregulation Taskforce (the Bell Report). The Taskforce recommended that Standards Australia should not develop building standards except at the request of the ABCB. However, the end result has been that the ABCB only approves standards to be referenced in the BCA.

Australian Standards referenced by the BCA are quasi regulation. HIA contends that they should be subject to the same rigorous analysis as regulation.

The decision to develop a standard should be made at arm's length from Standards Australia, reflecting a strong, industry-wide consensus. In accordance with the recommendations made by the Bell Report, Standards Australia should not have any involvement in the development of new standards unless invited by the ABCB. This would address concerns that standards are proliferating to serve the commercial interests of Standards Australia and some businesses. The MOU between Standards Australia and the ABCB should be amended to reflect this intention.

Standards Australia needs to ensure that new standards are developed according to the COAG Principles, recognising the requirement to conduct an independent, rigorous and comprehensive regulation impact assessment through the use of comprehensive cost/benefit analysis. This requirement should be applied to any standard that may be referenced, either directly or indirectly, through the BCA. Regulatory Impact Statements need to be prepared by the ABCB early in the development of proposed standards, prior to public comment. This will have the effect of ensuring that there is a 'case to prove' prior to substantive investment in the development of the standard.

To ensure consistent performance in the assessment of new and/or amended standards, the Costing Tool developed by the Office of Small Business should be used as detailed in the COAG commitment to the National Reform Agenda. The Costing Tool would provide an indicative measurement of the associated costs and benefits.

Proposed standards need to be appropriately advertised for public comment to ensure a comprehensive response from interested parties. Likewise, any new standards or amendments to existing standards that are developed must be publicised to ensure that industry has knowledge of them and is able to comply.

One way forward would be to adopt a transparent standards assessment process such as that provided in Appendix 1. This process is based on that in use by the Victorian Competition and Efficiency Commission (VCEC).

In addition, more credence should be given to alternatives standards such as those developed by industry – a case in point being the HIA Kitchen and Bathrooms Construction Guide. Whilst the Australian Standard could be minimum default regulation, industry guides could be adopted by way of specific contractual arrangement with a consumer.

Standards as minimum effective regulation

Standards were originally developed when a general format used by a dominant supplier was adopted by other suppliers. These standards removed inconsistencies between products, allowing different competitors to sell compatible products. One set of products could be readily substituted for another, giving consumers and industry greater choice. Such voluntary standards codified industry practice.

However, there is now a new interest in using standards to drive what are seen to be “best practice” outcomes. Such standards go beyond codifying common business practices to set higher benchmarks for performance.

The enthusiasm for “best practice” standards sits uneasily with the stated preference of governments for minimum effective regulation. It is contrary to Standards Australia’s obligations under its Memorandum of Understanding (MOU) with the Commonwealth which requires the company to develop standards that are minimum effective solutions. It also conflicts with the objective of the Building Code of Australia (BCA) to set *minimum* technical requirements for ensuring safety and amenity. State legislation often includes similar requirements (eg. the aim of the Victorian Building Act 1993 is to facilitate *minimum acceptable* construction standards).

The tendency by regulators to adopt standards by reference in legislation and regulations is of concern. This issue has long been recognised by regulatory experts and yet little worthwhile action has been taken to address it. A paper presented to the *Fourth Australasian and Pacific Conference on Delegated Legislation and First Australasian and Pacific Conference on the Scrutiny of Bills* summarised the issues and possible directions for reform in the following terms³:

...the lack of any guidance as to the use of third party documents in legislation has led to their overuse by regulators, both as a matter of convenience and as a means of avoiding proper scrutiny.

The relative absence of scrutiny associated with these instruments has led to the use of inappropriate instruments while their ease of adoption has led to an explosion in the volume of law beyond that which can hope to yield efficient outcomes.

The appropriate responses appear to lie in an enhancement of processes of scrutiny of such instruments together with the issuance of guidance or formal limitations as to the circumstances of their use.

Contact with major third party authors of such documents aimed at fostering an understanding of their role and of the requirements of the legislature may also prove helpful in ensuring that they perform their legitimate function as efficiently as possible.

The OECD has also identified a range of problems arising from the greatly increased use of technical standards and other “quasi-legal measures” within the regulatory structure, including issues of transparency, enforceability and regulatory inflation⁴.

³Deighton-Smith, R. *Incorporation of Third Party Documents in Regulation: Issues of Accessibility, Compliance and Accountability*. Conference held at Parliament House, Melbourne, 1993.

⁴ See *Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*. OECD, Paris (2002), p171.

It is now estimated that over half of the more than 6,000 Australian standards in force at any given time are incorporated "by reference" in one or more legislative instruments in Australia. This means that these standards form a substantial element of the effective body of law in Australia. Despite this, few quality controls are in place to ensure that these standards are developed and drafted in ways that are consistent with their use as quasi-regulation.

A particular issue is that standards have historically been, and largely continue to be, attempts to codify "best practice". By contrast, the role of regulation is to identify minimum acceptable practice. While in some areas there may be relatively little difference between these two concepts, in others the difference will be substantial. Regulating via the use of instruments that reflect best practice is likely to result in significant losses of economic welfare, particularly due to the elimination from the market of appropriate low price/low quality combinations.

Most standards are lengthy and highly technical in their drafting. The burden of compliance, including maintaining awareness of what standards are referenced, which are the current editions of each standard, and what are the substantive requirements of each of those standards, is clearly unreasonable.

It is of fundamental importance to regulatory reform policy that regulators be subjected to clear controls over the use in regulation of Australian Standards and other technical materials. Regulators must be required to adopt more critical approaches to incorporating technical material, for example referencing only limited and highly relevant elements of a standard, rather than the whole document. They should also be required to consider setting technical standards in regulation, rather than via the use of SAA standards. Such approaches would contribute to a refocusing of regulation on minimum acceptable standards, rather than "best practice".

There is also opportunity for industry participants to legitimise practices or even secure a commercial advantage during the standards development process. At its worst, this may involve developing product-specific standards to capture market share.

Recent examples include the termite standard AS 3660.1 and glazing standard AS 1288. The Termite Standard is referenced in the BCA and requires 'whole of house' protection. However, the BCA limits the level of termite protection to primary building elements

Such inconsistencies create industry confusion.

Another example is the Victorian Guide to Standards and Tolerances which seeks to impose additional levels of *de facto* regulation. Such criteria should be either incorporated within regulated standards in which case they would need to be subject to the demonstrable need and net benefit tests or alternatively if they are to be incorporated into a voluntary standard, that standard should only be considered valid by virtue of express contractual provision.

In the case of the termite standard, the NSW Office of Fair Trading, whose responsibility is to licence builders, has issued a directive that 'whole of house protection' is required, in contrast to the regulators position (NSW Department of Planning) that compliance with the BCA is the required level of protection.

Various Local Councils have also implemented the higher requirements of the Australian Standard, as a matter of convenience, without considering the broader ramifications of doing so.

Information tabled at a recent standards committee meeting indicated that proposed changes to the glazing standard would have a nominal impact. When tested by industry this has proven not to be the case with significant changes to glazing thickness and corresponding significant cost implications. No cost benefit analysis was undertaken, even though it is to be called up in BCA 2006.

Increasingly Standards Australia is looking at entering the policy setting arena, as evidenced by the recent Standards Australia 'white paper' on sustainability and the formation of associated Standards Australia Committees. Setting policy is the role of governments, not Standards Australia.

Pressures for more and broader regulatory requirements in standards continue unabated. Of particular concern is the tendency for the scope of the matters covered by standards to be expanded.

In recent times the original "core" of health and safety related standards requirements have been supplemented by new standards requirements. A case in point is the expansion of the disability access code, AS1428, from a single standard to 10 parts, each adding to the scope and breadth of requirements.

Industry involvement

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.

HIA has reduced the number of standards committees on which it is represented from 68 to 39. Such representation consumes significant resources from industry bodies for little or no return. Indeed, the industry is expected to pay for the privilege of contributing their intellectual property to Standards Australia.

Notwithstanding this, to ensure that outcomes are consistent with good industry practice, industry groups must stay involved in the process. If standards were subject to economic, business and industry impact assessment as would normally be the case with mainstream regulation some of the pressure for constant monitoring of standards development by industry bodies would be relieved.

The dilemma for HIA and industry generally is that they contribute valuable intellectual property 'in good faith' to a private organisation which uses the final product for generating revenue to fund its activities without any direct return to industry associations or their members.

HIA has provided detailed industry and technical information for numerous standards committees ensuring minimum acceptable standards are reached, however the rate of change to standards make this increasingly more difficult to support, particularly when such support is provided at a cost to the industry.

Reliance on standards by courts

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

Despite this fact, 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, in effect, have been treated as grounds for action.

This use of standards by courts and tribunals is especially 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.

The status of various standards which are not referenced in the BCA creates industry confusion. HIA strongly suggests that courts only rely on standards that have been subject to regulatory analysis, and are referenced in the relevant current BCA edition. No standing should be given to draft or latest edition standards when they have not yet been published in the BCA.

Impact of standards on the housing sector

Australia has the benefit of a highly competitive home building industry that produces low cost product, and readily responds to consumer demand. Entry into the industry has been relatively easy and competition is fierce.

Construction costs for a new home in Australia are highly competitive on a world scale, and are considerably below those of New Zealand⁵:

The housing sector is dominated by small businesses and independent contractors. Due to the high number of small businesses in the industry, the sector is particularly susceptible to costs associated with the administration of regulation. Such costs have an exponential impact. The costs of purchasing and maintaining standards are prohibitive, while the ramifications of non-compliance due to unintended ignorance of constantly updated standards may lead to even more serious costs.

The significant cumulative regulatory burden from multiple standards creates serious problems for both producers and consumers. For builders and contractors, the burden of simply keeping abreast of constantly changing regulatory requirements is substantial. Of similar significance, producers must determine how to implement new compliance requirements in ways that are best integrated with their normal productive processes. This can entail varying designs to accommodate new regulatory requirements, and researching new materials and processes that may be required in order to achieve compliance at acceptable cost levels.

From the consumer perspective, the accumulation of the regulatory requirements in the form of standards can have serious negative effects on housing affordability. There are several reasons for this:

⁵ Pavletich, H. "Planning and process used for the Greater Christchurch urban development strategy" May 2005

- Regulatory Impact Statement (RIS) analysis compares social benefits and costs, rather than taking the perspective of the private individual who is likely to bear most regulatory costs⁶. Frequently, many of the identified benefits accrue to parties other than the consumer, suggesting there will be significant net costs associated with the regulatory intervention.
- This effect is often exacerbated by the fact that RIS analyses typically use low discount rates which, while perhaps reflective of social opportunity costs, do not reflect the real cost of capital to housing consumers. Reference here should be had to an inquiry report by the Productivity Commission, “The Private Cost Effectiveness of Improving Energy Efficiency” (Report No. 36), October 2005.
- Lenders invariably impose minimum deposit requirements on borrowers. Thus, even where a regulatory requirement has a positive net benefit from the consumer's perspective, a reduction in affordability will result due to interaction of the price impact on the finished house and effective borrowing limits.

We note that the Productivity Commission's report, “First Home Ownership” (Report No. 28), June 2004 on housing affordability has discussed these issues in some depth. That report outlined the fact that the accumulation of new regulatory initiatives imposed on the housing industry, including the proliferation of standards, is such that the impact on affordability has been substantial. There is also a risk of it becoming much greater in the future.

The costs of keeping up to date with standards, combined with the costs of primary legislation and regulation, are prohibitive. Small to medium based enterprises (SMEs) have a limited ability to purchase and adopt standards as they are referenced in legislation or the BCA. This cost is exacerbated when those new standards then refer to other standards (indirect referencing) that then need to be purchased. Current standards (including drafts and associated RIS) must be offered online free of charge in an effort to minimise these costs.

To this end, HIA welcomes 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 requirements for primary and secondary legislation.

Improving access to mandatory standards will contribute to increasing their productive use and improve compliance. 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.

⁶ In a competitive industry context, such as that of the house building industry, it must be assumed that, where additional costs are imposed on producers, these will largely flow through to consumers via price increases. Thus, consumers ultimately bear most regulatory costs in the areas under discussion.

CONCLUSION

The decision to develop a standard should be made at arm's length from Standards Australia, reflecting a strong, industry-wide consensus. In accordance with the recommendations made by the Bell Report, Standards Australia should not have the discretion to develop new building standards unless invited by the ABCB. A decision by the ABCB to request a new standard should follow an open process to establish the need for the standard.

This approach would address concerns that standards are created to serve the commercial interests of Standards Australia or industry advocates. The MOU between Standards Australia and the ABCB should be amended to reflect this intention.

New standards should be developed according to the COAG principles for good regulatory practice. The Victorian Competition and Efficiency (VCEC) has adopted similar principles (appendix 1). All standards to be referenced, directly or indirectly in the BCA, should be subject to an independent, rigorous and comprehensive regulation impact assessment. Regulatory Impact Statements should be prepared by the ABCB early in the development of proposed standards, prior to public comment.

To ensure consistent performance in the assessment of new and/or amended standards, the Costing Tool developed by the Office of Small Business should be used as detailed in the COAG commitment to the National Reform Agenda. The Costing Tool would provide an indicative measurement of the associated costs and benefits.

Standards were originally developed to deliver public benefits such as wider consumer choice, more efficient markets and improved safety and amenity. With the creation of Standards Australia outside government as a private company, this public good role has been diminished. The pressure to recover costs has led to a flood of new, expensive standards. Government should reassess this approach and fund the public good activities of Standards Australia to ensure that the community has ready access to standards information.

HIA supports a number of reforms of Australian standards:

- Government must ensure that new standards are developed only in cases of genuine need. This could be achieved by giving an independent third party, such as the ABCB or the Office of Regulatory Review, a greater role in the decision to create new standards (as recommended by the Bell Report);
- The separation of the public good and commercial operations of Standards Australia and SAI Global must be effective. Standards Australia should not be driven by commercial returns;
- The Government should review the relationship between Standards Australia and SAI Global. The relevant documents should be available for public scrutiny;
- Standards Australia must accept a higher level of accountability for standards, ensuring appropriate cost/benefit analysis and public consultation. This should be achieved via the following means:

- A formal application process for any suggestions for new or amended standards, including the requirement for detailed justification;
- The use of a nationally consistent costing tool, such as that developed by the Office of Small Business and endorsed by COAG;
- Interested parties / industry groups to be able to register their interest in any new standards or amendments to standards. Registered parties could then be notified electronically of any public comment periods, and the introduction of any amendments or new standards;
- All public comment periods, amendments, or new standards should be advertised by Standards Australia. Advertising should be inclusive of, but not limited to, Standards Australia publications.
- All drafts for public comment, and all associated RIS should be available online free of charge;
- The entire text of all new standards, and any amendments to existing standards should be available online free of charge. The Victorian Government has recognised the regulatory role of standards, supporting this view in their response to their Victorian Competition and Efficiency Commission report.
- Standards or regulations referenced directly or indirectly through the BCA should be subject to a transparent cost/benefit and regulatory impact analysis in accordance with the COAG Principles;
- Standards should be available at no more than marginal cost, as has been general practice with legislation; and
- Compliance with a standard should be a defence in court and tribunal proceedings. Reliance on standards that are not referenced in regulation or agreed as part of the contract should be prohibited.

STANDARDS ASSESSMENT PROCESS (Regulated)

STEP 1 – Identify the problem or issue to be addressed

<p>Source of problem</p> <ul style="list-style-type: none"> • Intervention is justified on economic efficiency grounds such as market failure, externalities, inadequate information, public goods. • Intervention is justified on basis of social and equity objectives such as redistributive goals, health and safety concerns, policing of crimes etc • Intervention is justified on basis of environmental objectives
<p>Existence and Extent of Problem</p> <ul style="list-style-type: none"> • Problem exists currently • Problem is anticipated and the probability of the problem occurring is estimated. • Problem is a minor irritant. (If so why is government action justified?) • Problem is a significant hazard • There is sufficient evidence that a problem exists • The problem is identified and quantified where possible • The identification and extent of the problem is based on anecdotal evidence only. • If no data is available this is clearly stated.
<p>Groups Affected</p> <ul style="list-style-type: none"> • The groups affected by the problem are identified
<p>Type and Incidence of Costs</p> <ul style="list-style-type: none"> • Identifies the economic, social, and environmental costs of the problem • Identifies who bears these costs
<p>Risks and probabilities</p> <ul style="list-style-type: none"> • The risks associated with non-intervention are assessed • Technological, economic, political, administrative, social and /or environmental constraints that are relevant to the problem are identified

STEP 2 - Consultation

<ul style="list-style-type: none"> • There was consultation with main affected parties – Cross reference to groups identified in step one, three and four. • The views of those parties are identified and summarised • Identify the consultation process and those groups who will be consulted. (including the period and reasons)

STEP 3 – Specify desired objective

<ul style="list-style-type: none"> • Objectives are SMART: Specific; Measurable; Achievable; Realistic and Relevant; Time-dependent
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- Where the measure has several objectives the primary objective is identified and separated from the secondary objectives
- Objective specified is related to the objectives of the authorising Act

STEP 4 – Explanation of the proposed standard, its likely impact, and the enforcement regime

Description of Proposal
<ul style="list-style-type: none"> • Explains how the proposed measure is going to resolve the problem or issues identified in STEP 1. • The proposed measure and its requirements are described. If measure includes several elements, each element is described. • Clearly states whether proposed measures are new, replacing, updating or consolidating existing regulations • Clearly states how the measure would function in practice (e.g. in terms of achieving the desired objective) • The specific legal provision authorizing the making of standard is identified
Affected Groups
<ul style="list-style-type: none"> • Identifies the groups that would be affected by the proposed standard, and gives a brief description of those groups (eg in the case of industry, an indication of the number of businesses in the industry, where they are located; the proportion of small businesses) • There is a broad indication of the how the groups would be affected
Enforcement and Compliance
<ul style="list-style-type: none"> • Outlines proposed enforcement regime and highlights any major differences to existing regime. • States expected compliance rate and the basis for expected compliance rate • Outlines compliance strategy including expected numbers of inspections, audits, investigations of complaints and justifies the appropriateness of this strategy. • States why it is not feasible to outline compliance strategy • States how the effectiveness and efficiency of the measure will be monitored and assessed.
Consistency Government policy
<ul style="list-style-type: none"> • Discusses the consistency of proposed measure with general government policy

STEP 5 – Assess the costs and benefits of the proposed measure

Base Case
<ul style="list-style-type: none"> • Base case is clearly defined
Affected Groups
<ul style="list-style-type: none"> • The groups likely to be affected by the proposal are identified and the impact of the proposal on each group is described. • Subgroups that may face different costs and benefits have been identified

Costs and Benefits Identified
<ul style="list-style-type: none"> • The costs and benefits are comprehensive. • The economic, social, environmental, administrative, compliance costs and benefits of the proposal have been identified • The tangible and intangible costs and benefits have been identified.
Analysis of Costs and Benefits
<ul style="list-style-type: none"> • The analysis is commensurate with the issue. If impacts are relatively minor then analysis can rely on available data, facts, information, if impacts are more significant it may be appropriate to collect more information and undertake additional analysis. • The costs and benefits for each different group of regulations is assessed • Dollar values have been assigned to the costs and benefits where feasible. • No aspect of the cost/ benefit analysis has been 'double counted'. • Sources of data have been cited. • Other sources of data could be used and should be used given the expected size of the impacts. • Indicative impacts should be modelled and the assumptions should be explicitly stated and the data made transparent. • The costs and benefits for each different group of regulations is assessed • The impact of costs and benefits on the different groups affected by the measure are identified. • The impact of the costs and benefits on the industry and/or community as a whole are identified. • Indicates risks and probabilities associated with the estimation of the costs and benefits, including explicit statements of the assumptions made and the basis for those assumptions and sensitivity analysis on the key variables.
Discount Rate
<ul style="list-style-type: none"> • The costs and benefits are calculated over the life of the standard • The costs and benefits are discounted. • The discount rate is stated and the choice of discount rate explained.
Decision Criterion
<ul style="list-style-type: none"> • There is an explicit decision criterion – e.g. net present value, benefit cost ratio, break even analysis, cost effectiveness analysis or a balanced scorecard. • The decision criterion is appropriate given the feasible quantification of costs and benefits. • Analysis demonstrates that the benefits of the proposal are greater than the costs and cost not borne disproportionately

STEP 6 – Assess proposed measure against alternative options

Alternative options
<ul style="list-style-type: none"> • Non-standards options are considered • Alternative forms to standard development are considered

- Options that are not permitted specifically under the relevant principal legislation are examined
- The alternative options that could be used to wholly or partly achieve the specified objective(s) must be identified, and an assessment must be made of their associated costs and benefits.

Description of Alternative Options

- Clearly states how the alternative option would function in practice (e.g. in terms of achieving the desired objective)
- Practices in other jurisdictions have been highlighted, and if proposed rule differs from these, there is an explanation.
- If a less onerous regime is in place in other jurisdictions, evidence is provided as to why such an approach would not be appropriate to the particular circumstances

Cost Benefit Analysis of Alternative Options

- Two or three alternatives (other than the base case) are examined in detail – where possible cost benefit analysis taken to the same level as the proposed measure
- The costs-benefit analysis of at least two or three of the most feasible alternatives should be undertaken to the same level of detail as the proposed measure. Refer STEP 4 for details of criteria below:

	<i>Option 1</i>	<i>Option2</i>	<i>Option3</i>
<i>Affected groups</i>			
<i>Costs and benefits identified</i>			
<i>Analysis of costs and benefits</i>			
<i>Discount rate</i>			
<i>Decision criterion</i>			

Summary

- Discussion compares the costs and benefits of the proposal with the costs and benefits of the options and demonstrates that the net benefits of the proposal are greater than the net benefits of the options.

STEP 7 – Assess the impact on small business

- The proposal should discuss the impacts on small business
- The changes that have affected the industry in the past few years are described.
- The variation in compliance burden between a typical small business and a large business is stated.
- States whether any compliance flexibility measures have been considered that will assist small business to meet the requirements of the proposed measure
- States distribution of benefits arising from measure – benefits to small business in comparison with large business
- The impact of penalties and fines for non-compliance on the viability of small business is considered.

STEP 8 - Assess competition impacts

- Explains whether there is a restriction on competition.
- Identifies potential changes to how market(s) function.
- Identifies the restriction on competition
- Shows that the restriction is necessary to the objective
- Assesses the costs to the community caused by the restriction
- Assesses the community benefit of the restriction
- Assesses whether the benefits of the restriction outweigh the costs of the restriction.

Note: Adapted from the Victorian Competition and Efficiency model for regulation development 2005.