

Standards Australia Limited November 2014



**Standards Australia Submission on Draft Report:
Competition Policy Review
November 2014**

Key Points

- Good regulatory practices are key to ensuring good competition policy outcomes. This equally applies when referencing third party material including technical standards in regulation.
- The use of third party material (including technical standards) should be assessed at the time of referencing as part of a best practice regulatory framework.
- Technical standards cannot be considered outside of the wider context of technical infrastructure which includes accreditation, certification and assessment processes.

Response to the Draft Report

Standards Australia broadly supports the recommendations contained in the Draft Report related to standards and conformance. It is important though to separate what is a matter contained within an Australian Standard, and what is a matter that is defined as a 'standard'. In many instances reference is made to 'standards' which are in fact matters related to the setting of a requirement or law or regulation outside of the process undertaken by Standards Australia.

There is, understandably, confusion between these two issues.

Page 102 of the Draft Report contains a number of matters which are referred to in the Draft Report as disincentives against new competitors entering Australian markets. The 'further information' column is reproduced below, with additional commentary from Standards Australia:

| Further information | Standards Australia commentary |
|--|---|
| <ul style="list-style-type: none"> • a geosynthetic product imported from Germany that meets EU standards, still requires re-testing in Australia by VicRoads; | <p><i>This would appear to be a requirement of VicRoads and unconnected to Standards Australia or our process. Without knowing of the details of the issue, even if VicRoads seek that a product meets certain Australian Standards, it is a requirement set by VicRoads, not Standards Australia.</i></p> |
| <ul style="list-style-type: none"> • vehicle air conditioning refrigerant has strict controls in Australia, including licensing of mechanics that use it, whereas there are no such restrictions in the US; and | <p><i>Standards Australia is not responsible for the licencing of mechanics. Whatever restrictions exist in Australia relating to the competence of trade practitioners are matters of policy, not matters which belong in technical specifications.</i></p> |
| <ul style="list-style-type: none"> • a new conveyor belt lubricant developed in the US where the manufacturer decided against selling it in Australia due to costs and delays in the chemicals approval process (but is available in NZ where there is stronger recognition of other countries' accreditation). | <p><i>Chemical approval is a regulatory function and not a function of Standards Australia. Accreditation of chemicals and systems is not a matter which Standards Australia is involved in and the choice to recognise other national accreditation schemes is a matter for a jurisdictional regulator, not Standards Australia.</i></p> |

The issues raised in the table are significant but limiting the commentary to the use of 'Standards' misses opportunities to review wider issues of regulatory good practice, harmonisation of controls across jurisdictions within Australia, and internationally.

In looking to final recommendations, the use of Australian Standards and other third party material would capture the intent of the Panel and allow for appropriate measures to be put in place regarding the assessment of requirements.

Standards and regulation

Standards Australia supports the good use of technical standards, including Australian Standards, in regulatory arrangements. This includes appropriate and rigorous assessment of specifications adopted by and developed through our process.

We support best practice regulatory assessment including applying appropriate cost benefit and public benefit analysis when settling laws and regulations. We support competition matters being considered as part of any process which could include the referencing of third party material in regulatory regimes.

We support performance based regulatory arrangements that allow for technical standards and other specifications to be used as a solution in a non-prescriptive way. Our work with the Australian Building Codes Board is a good example of how performance based regulation can work.

When considering the referencing of Australian Standards and other standards and specifications in regulatory arrangements, Standards Australia says that the appropriate way for this to occur is for regulatory authorities as the policy owners to conduct such assessment, not the third party document creator.

Standards Australia has a process for the assessment and prioritisation of new the work that we undertake and this is detailed in our June 2014 submission. This is not a substitute for appropriate consideration of regulatory matters and importantly, in the case of documents developed outside of a process which aligns with World Trade Organization protocols, imperative from a trade perspective.

Standards Australia also believes that in any final recommendation from the Panel, consideration should be given to technical standards in the wider context of the standards and conformance system including the work undertaken by all members of the Australian Technical Infrastructure Alliance¹.

This second submission provides comment on matters in the Draft Report. It should be read in the context of our first submission of June 2014.

Use of International Standards and harmonisation

Whilst beyond the scope of this report in some ways, it is important to recognise other initiatives which are underway in relation to standards and technical regulation.

Standards Australia welcomes and supports the focus by the Commonwealth government on the greater use of International Standards and the harmonisation of wider conformance infrastructure including accreditation and certification arrangements.

Standards Australia believes that if done well, in an informed way and with a settled methodology, such measures could potentially achieve much in removing barriers to competition in Australia.

Standards Australia as Australia's national standards body, looks forward to continuing to work with government at all levels in achieving outcomes in this area.

Standards Australia says that matters of competition should be considered at the point of referencing or recognition and not at the point of publication by a Standards body. This is particularly true where use of standards in regulatory arrangements include standards and specifications developed in other national jurisdictions and not subject to the principles contained in the Memorandum of Understanding between Standards Australia and the Commonwealth.

Consideration of Draft Recommendations

Draft Recommendation 11 — Regulation review

Standards Australia supports this recommendation.

When reviewing mandated third party material referenced in regulation, Standards Australia says that this is part of review of the regulation itself and not as a discrete undertaking.

Standards Australia is not a policy setting body. To the extent that governments choose to reference Australian Standards and other third party material in regulation, this must be done in the context of policy. Policy objectives are owned, determined, met and consulted on by relevant policy agencies of government and not Standards Australia or any other third party developer.

In developing voluntary technical documents, Standards Australia works with government, industry and community interests to determine the appropriate scope for the development of technical standards but is not and cannot be responsible for policy settings.

Beyond this, Standards Australia says that **any technical specification** or reference to third party material in regulation be it an Australian Standard, a standard developed by government, an International Standard or any other national or regional standard or an industry code should be considered on a neutral basis.

Draft Recommendation 12 — Standards review

Standards Australia supports the intent of this recommendation. No comprehensive review of existing regulatory arrangements which include referenced Australian Standards can be undertaken without reviewing the technical specification itself.

Standards Australia would assume that in any review of regulation, referenced documents would be considered as part of this assessment. This includes any specification referenced in regulation and should not be limited to those developed by Standards Australia.

Conclusion

Standards Australia thanks the Panel for the opportunity to make this submission and would welcome further discussions.

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ⁱ <http://www.atia.org.au>