



National Review into Model Occupational Health and Safety Laws

**Standards Australia Submission
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Introduction

Standards Australia welcomes the Review Panel's work and looks forward to further discussions as the new approach to workplace health and safety becomes clearer. Occupational health and safety (OHS) is an important part of the Australian economy and Australian life generally.

The first section of the submission explains why the submission is being made and makes points about the design of the regulatory structure, particularly the potential role of Australian Standards as 'guidance material'. The second section comments on particular sections of the Review Panel's *Issues Paper* and answers questions in the *Issues Paper*, using examples from current Australian Standards.

Rationale for this submission (including response to Issues Paper Question 8)

Standards Australia believes it is important to remind the Panel of the important role played by Australian Standards in the overall regulatory framework for workplace health and safety. Accordingly, this submission addresses a number of the specific questions asked by the Panel. In Standards Australia's view these questions cannot be satisfactorily answered without taking account of Australian Standards.

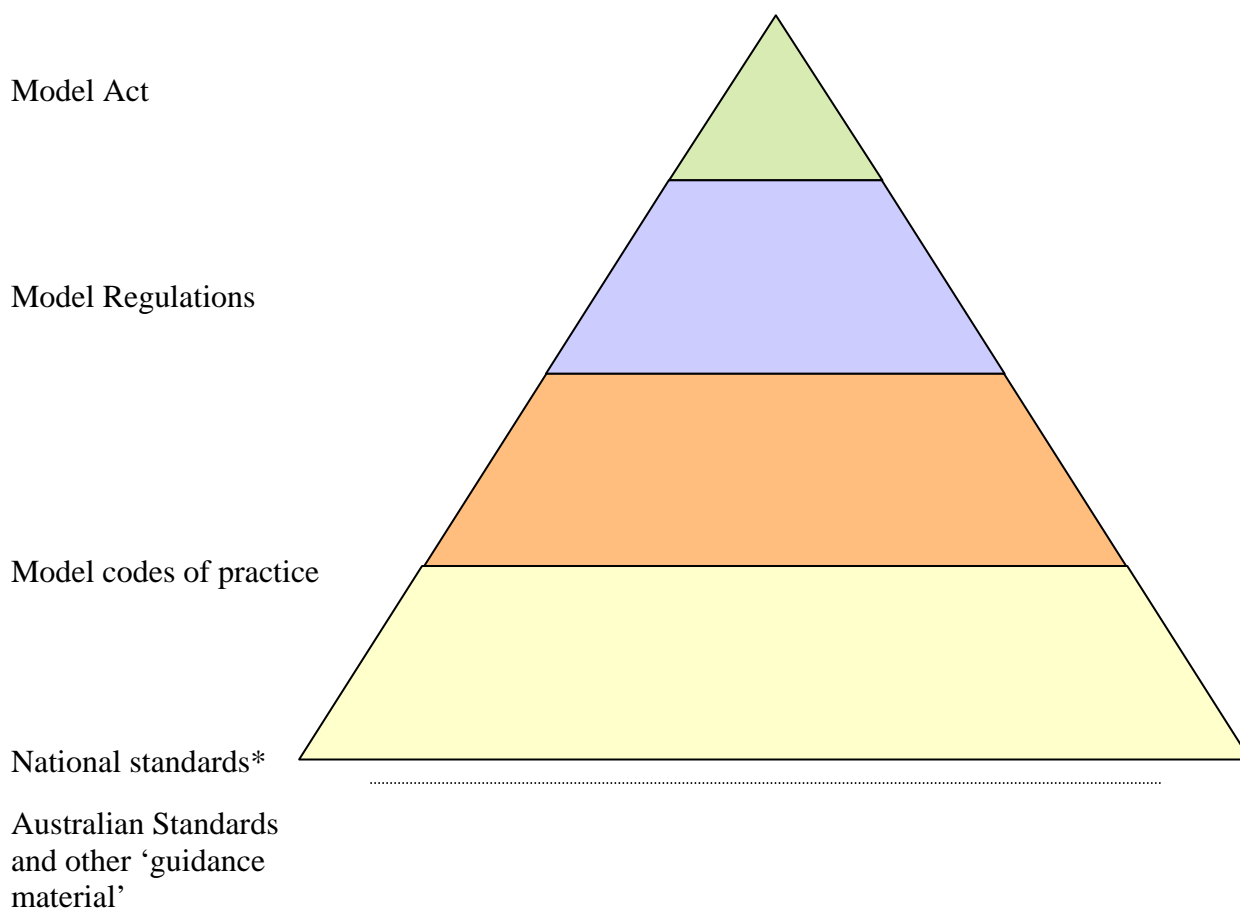
Further, Standards Australia believes that the current focus on OHS harmonisation should not be at the cost of the continued efficient and effective working of other parts of the OHS regulatory framework. No observer underestimates the difficulties attending harmonisation. The long history of attempts to reform OHS is eloquent evidence of the problems likely to be encountered this time around.

This goes directly to question 8 in the Panel's *Issues Paper*:

Q8. Alternatively, should a model OHS Act incorporate all industry specific safety legislation? If so, how and to what extent (e.g., could industry specific issues be dealt with in regulations, codes of practice or guidance material under the model OHS Act)?

This question asks submitters to consider the design of the regulatory structure. Standards Australia, like all OHS stakeholders, hopes that the Review Panel's work – and the response to it from jurisdictions – will be fruitful. A model OHS Act is just the tip of the 'OHS pyramid'. When harmonisation is achieved to the maximum extent possible within a reasonable time, it will be important that the remainder of the pyramid is ready and able to contribute to OHS outcomes. Australian Standards should be seen as an essential component of the pyramid.

Under a harmonised system, the pyramid might look like this:



* Developed by ASCC replacement body, as appropriate (Intergovernmental Agreement, 3 July 2008)

The extent to which Regulations and codes of practice need to be harmonised will be a matter for jurisdictions. There will be a trade-off between the costs, particularly in time, of negotiating agreed approaches and the benefits flowing to business, in terms of certainty and cost savings.

Australian Standards, at the base of the pyramid, are, by definition, 'harmonised'. While they are voluntary (unless they are referenced in regulation) they are intended to apply across the nation and they do. Their importance in the regulatory framework was recognised in the March 2007 draft of the ASCC *National OHS Standards Framework: Handbook* (pp 20-21, *emphasis added*):

What is National Guidance Material?

Sitting outside OHS regulatory regimes is a range of information which can *provide valuable guidance* to people working in particular industries and occupations on what is reasonable and practicable. This includes:

- industry-specific codes of practice and technical guidelines
- *Australian (AS) and International (ISO) Standards*, and
- guidance material produced by regulatory agencies and the ASCC.

There are a number of purposes for which guidance material may be prepared. These include *assisting people to understand what the law says or requires, and providing up-to-date technical advice*. Guidance material can be used to deal with emerging issues at the national and jurisdictional level for which a regulatory response is either not appropriate or not yet developed.

As a harmonised system develops in OHS, we envisage that Australian Standards will still be widely used to provide guidance to businesses and workers. Australian Standards play a major role relevant to workplace health and safety in areas not covered by OHS laws, e.g. electrical safety via the Wiring Rules, intrinsic safety in mining, explosive hazards control in mining, ventilation and air supply, personal protective equipment Standards, welding Standards, vehicle Standards, pulleys, harnesses, risk management (generic and industry-specific), safety signage, product safety, test methods, management systems, and a myriad of deemed-to-comply details and solutions.

Many Australian organisations have embraced the OHS Standards produced by Standards Australia. They become part of the organisation's risk management strategy to address changing legislative responsibilities and protect the organisation's workforce. Australian Standards promote a safe and healthy working environment by helping businesses to identify and control their health and safety risks, reduce the potential for accidents, aid their legislative compliance and improve their overall performance.

We agree with COAG that national harmonisation is a top priority, but argue strongly that there is a role for Australian Standards in any future structure. The desire for harmonisation should not lead to corner-cutting or reduction of protection for workers.

While Acts and Regulations set the direction of OHS, Australian Standards are what employers and workers look to in the workplace to keep them safe. Australian Standards are at the front line in ensuring the safe factory floor, workshop, building site, road construction team and mine.

Standards Australia notes that COAG, at its meeting of 3 July, 'recognised legitimate concerns about workplace safety and reaffirmed its requirement that there be no reduction or compromise in workplace safety'. Australian Standards are crucial to delivering on this requirement.

The quality of the regulatory structure at all levels is just as important as, if not more important than, whether head regulation is completely harmonised. The strength of the OHS pyramid grows from the strength of its base. If the aim is optimum national harmonisation of OHS, surely it is important to retain and sustain the role of the truly national element of the current system – Australian Standards.

Responses to questions in the Issues Paper

Section 3.8 Activities which impact on health and safety

Standards Australia would like to stress the importance of achieving real alignment and consistency between the different OHS jurisdictions. This is a fundamental issue for Australian Standards, as not only are our documents relevant in all jurisdictions, but our entire committee system assumes that there is national consensus during development of the documents.

Even subtle differences between the various Acts and Regulations will create significant additional costs for businesses. These differences also produce great difficulty for the technical committees of Standards Australia in drafting Standards which are well aligned to all Australian Acts and Regulations.

Box: OHS and small business

To meet its responsibilities under OHS regulation, small business needs to pursue both performance-based standards and prescriptive measures. The former establish a measurable objective without restricting the options for achieving that objective. The latter describe in detail how to achieve the desired result, including specifying materials and dimensions.

For small business, prescriptive measures are generally the easiest to implement. They do not require external specialist advice and they provide clarity about exactly what is required.

OHS prosecutions are generally brought for failure to maintain a safe and healthy workplace or failure to establish a safe system of work. While failure to comply with the details of a voluntary Australian Standard may provide evidence that an unsafe condition exists, it could not be the sole reason for the prosecution (because the standard is voluntary).

An Australian Standard is based on common practice and past experiences. However well it is written, an Australian Standard can never hope to anticipate every possible circumstance that might arise in a workplace.

OHS legislation provides a good example of outcome-focused regulation and places Australian Standards in their proper light. A Standard can underpin government outcome-based regulatory requirements, to assist industry to achieve its legal obligations in terms of a specific safety outcome by providing one or more deemed-to-satisfy solutions.

Q34: How should the model OHS Act deal with situations where the relevant upstream activity occurs in another jurisdiction or outside Australia, for example, where design occurs in one jurisdiction and manufacture in another? Should the manufacturer be responsible for the failings of a designer in this situation?

There is a need for a clear and consistent mechanism for ‘taking up’ responsibility for activities carried on outside each jurisdiction. For example, the vast majority of gas cylinders are designed and manufactured overseas, imported into Australia, possibly sold on to a third party, distributed nationwide for filling, and retailed to businesses and the public in every Australian jurisdiction. At present, most OHS Regulations refer to AS 2030.1, which sets out requirements for design, manufacturing, testing and inspection, and filling of the cylinders – all functions essential to ensure public and industrial safety.

It needs to be clear whether a party in Australia has taken on the responsibility for those functions which have been carried on outside Australia. It is also important to ensure that all States and Territories are consistent, so that cylinders are treated equally, regardless of the port at which they first enter the country. Where appropriate the use of international standards could assist this process.

Q35: How should the activity of supply be defined? Should it occur only once or every time an item changes hands, whether permanently (wholesale, retail, second hand, and gratis) or temporarily (loan or hire)?

Defining the activity of supply is not a role for Standards Australia, but the manner in which Australian Standards are affected by this definition is a useful illustration of some current issues with second-hand supply of high-hazard items. For example, the ongoing safe operation of a pressure vessel requires knowledge of the original design and manufacturing data, whether that pressure vessel is new or second-hand.

Without such information, the owner has no knowledge of the conditions for which the equipment was designed, of the possible damaging effect of previous operating conditions, and of whether second-hand equipment is suitable for the intended new application. The lack of information may mean that the new owner of a second-hand pressure vessel may be unable or unwilling to properly register it with the relevant authorities. Key issue is actually that this situation is unsafe.

Section 4 ‘Reasonably practicable’ and risk management

Qs 42, 43, 44. *See Appendix B* for detailed response by Standards Australia Committee OB-007 (Risk Management).

Section 6.1 Role and functions of regulators

There is significant confusion and increased costs for industry when different regulatory bodies, or different officers within a regulatory body, apply different interpretations of the OHS Act, Regulation, or a referenced Australian Standard. Where differences or confusion exist, it is difficult for industry to obtain interpretative information on a case-by-case basis.

When regulatory bodies are involved with development of an OHS Standard, this can assist in building an understanding between regulators and industry. Commitment to standards making by regulators is to the benefit of all stakeholders. SA would welcome the opportunity to work with government agencies (or whoever) to prepare such standards and guides

Q81: Should the model Act include provisions that allow the making of interpretative documents?

While OHS Acts and Regulations set out extensive requirements, they may not be able to provide sufficient detail to guide businesses and employees in meeting those requirements. Australian Standards may provide an avenue towards meeting regulatory requirements in some fields, although there will often be many approaches which will provide effective compliance.

In some cases, the strict application of the requirements of the Regulation (or of a referenced Australian Standard) may not be practical, and it is essential that regulators communicate their expectations to the industry in an effective and consistent manner. For example, most jurisdictions require that the design of gas cylinders be verified and then registered with the relevant authority. The documentation required for design verification and registration is set out in AS 2030.1. Some industries use small quantities of gas with a very high commercial value. Because the cylinders containing these gases are imported, emptied and re-exported relatively quickly, it is often impractical or impossible to carry out the normal design registration process.

In this case, it seems sensible for the relevant OHS regulator to have the ability to issue an interpretative document to cover this situation. It also seems sensible that all jurisdictions adopt an aligned approach, so that a company operating in several States can follow the same procedures in each jurisdiction.

Section 9.2 Codes of practice

The availability of codes of practice is essential to the application of the OHS Acts and Regulations by employers. Codes of practice are particularly important for guidance on the technical issues related to plant, work in hazardous circumstances

(heights, confined spaces, etc) where Regulations have traditionally provided little in the way of specific technical requirements.

The development of nationally-aligned codes of practice would seem to be a more efficient solution in terms of government resources, and would provide better clarity for industry. Australian Standards could play a valuable role as codes of practice, over and above their use as 'guidance material'. The established Standards development process ensures that such documents are nationally consistent, that they have consensus support of the regulators who will apply them (and who have been involved in their development), and consensus support of the industries (employers and employees, who have again helped to develop the Standards) which will use them.

Q144: What provisions should be made in the model OHS Act relating to the development and approval of codes of practice?

It seems reasonable that the development and approval of codes of practice should be consistent across all jurisdictions, and the process described in the *Issues Paper* seems a reasonable way of providing an appropriate level of public consultation, expert advice, input from the regulatory authority and parliamentary oversight within the relevant state or territory.

However, the independent development of codes of practice in each jurisdiction creates the potential for significant variations in practical technical recommendations and requirements, even with uniform adoption of a model OHS Act, and uniform adoption of subordinate model Regulations. Such variation may be enough to significantly disrupt the smooth operation of industry across different States and Territories, removing the benefits of the current review and alignment process.

It is suggested that the model Act, in providing for the development of codes of practice, should include a mechanism for effective consultation between the relevant bodies in each jurisdiction. This should aim to reduce the potential for the development of dissimilar or conflicting recommendations and requirements in each jurisdiction. It should also act to avoid duplication of work, where several States and Territories develop similar documents in parallel. Ideally, the model OHS Act should encourage the development of codes of practice in a way that provides true national consistency at all levels of OHS law and practice.

Standards Australia currently develops documents that could be suitable for use as a code of practice under a model OHS Act, that is, documents that provide practical guidance to industry on how to undertake work safely. A number of Australian Standards are already used in this way by industry (such as AS/NZS 2865:2001 – Safe working in a confined space and AS 1940:2004 – The storage and handling of flammable and combustible liquids).

Box: Conformance assessment

Currently in Australia, the regulated safety conformance assessment for high-hazard plant focuses on design verification. There are no broad regulatory requirements to cover conformance generally associated with manufacturing or fabrication (although individual technical standards may impose their own criteria for this).

Conformance assessment (CA) is the demonstration of compliance with a standard, which gives a level of certainty to industry about whether/when something does/does not comply. A robust CA process provides the necessary assurances that plant and machinery have been designed and manufactured to meet standards that provide appropriate health and safety outcomes.

A conformance assessment can be defined as a process that documents and demonstrates that plant has been designed and manufactured in accordance with the relevant requirements in an accepted technical standard or specification.

Currently in Australia, each OHS jurisdiction has slightly different requirements for plant design registration, which are different again from conformance processes in place in other countries. There will be increasing acceptance in the future of a broader range of technical design and manufacture standards for plant supplied and used in Australia. Many of these will already have been required to comply with overseas conformance requirements. There is therefore a requirement to develop a broader conformance assessment process for Australia.

There is a suite of Australian Standards on conformity assessment that could be used to set the basis for a new conformity process for plant in Australia. These Standards mirror the equivalent ISO standard. If Australian processes recognise CA undertaken in accordance with the ISO standards, then assessments, with documentary evidence, that have been carried out in other countries that follow the same process may be acceptable. This should allow the movement of overseas manufactured plant to occur with minimal regulatory restrictions in place.

In revising the conformance assessment process in Australia, the extent of assessment will need to be identified and the relevant processes established. Generally for low-risk plant, self assessment may be acceptable with the option to bring in a formal assessor if necessary. However, for high-risk plant, a more formal, auditable process may need to be put in place. Whatever activity is performed with the plant it is important that reasonable steps are taken to ensure that safety is not compromised at any stages of the plant life.

Conclusion

OHS regimes across Australia have, for too long, been a tangled web of inefficiency and duplication, failing both workers and employers. While the States, Territories and the Commonwealth all take a broadly similar approach to regulating for safer workplaces there remain very real differences between jurisdictions, particularly in regard to duty holders and duties, defence mechanisms and compliance regimes, including penalties.

Australian Standards dealing with both generic and industry specific risk management, original equipment manufacturing and product safety are already playing an important part in OHS regulation.

Standards Australia, as the nation's peak non-government standards development body, has a very important role to play in the development of Australian Standards as an important component of a harmonised regulatory approach. Standards Australia would welcome increased engagement with the relevant government agencies to maximise the benefits which may be gained from development and utilisation of relevant and effective Australian Standards as a base to the pyramid of OHS in Australia.

Appendix A: Standards Australia

Overview

The Federal Government recognises Standards Australia (<http://www.standards.org.au/default.asp>) as the nation's peak non-government standards development and approval body. Standards Australia develops Australian Standards and related guidance material of public benefit and national interest and administers the Australian International Design Awards.

An Australian Standard is a published document which sets out specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs in the way it was intended. Standards are consensus-based, voluntary documents (self-regulation) with which compliance is not mandatory unless the Standard is incorporated into law (quasi-regulation or co-regulation) or called up in contractual arrangements.

Standards Australia is Australia's member of the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC) and the International Council of Societies of Industrial Design (ICSID), providing a link to international best practice and creating further efficiencies. Standards Australia's activities in these forums are subsidised by the Australian Government.

Standards Australia is a company limited by guarantee, with a Board and a Council. The Council has over 70 organisations as members, including some government departments and agencies. Hundreds of organisations nominate members for Standards Australia's technical committees. Committee members include officers of government departments and agencies. Australian Standards and guidance material are available through Standards Australia's publisher, SAI Global (<http://www.saiglobal.com/shop/Script/search.asp>).

Standards Australia worked with the then Department of Industry, Tourism and Resources and the interdepartmental committee preparing the Government's response to the 2006 Productivity Commission research study report on standards and accreditation. This work has led to changes to the Memorandum of Understanding between Standards Australia and the Commonwealth, represented now by the Department of Innovation, Industry, Science and Research, and to aspects of Standards Australia's operations.

Meanwhile, Standards Australia is launching its New Business Model (NBM), which will deliver greater rigour in the way standards are developed and will make it easier for other organisations (including government agencies) to be accredited to produce Australian Standards. A brochure on the NBM is at <http://www.standards.org.au/cat.asp?catid=144> and a summary of it follows.

Standards Australia's New Business Model

What is changing at Standards Australia?

We have a New Business Model to transform how Australian Standards are developed. Our stakeholders have demanded more timely and efficient Australian Standards and choice in how Standards are developed. Stakeholders want competition in Australian Standards development.

Standards Australia has responded to this challenge by developing:

New, more strategic ways of engaging with our stakeholders.

We are revamping how we work with stakeholders to see where Australian Standards can anticipate and meet future challenges. We are overhauling our consultative committees and appointing executives to work with industry and the community.

A Net Benefit Assessment to be applied to every project.

We are developing a template to assess potential Net Benefit (benefits vs costs) to ensure resources are allocated where Australian Standards will deliver the greatest benefits for industry and the Australian community.

New technology and better Australian Standards development processes.

We are transforming legacy processes that take years into lean processes that will take months. We are supporting extensive process re-engineering with a substantial investment in internet-based collaboration tools for stakeholders and Standards Australia staff, as well as staff training and stakeholder education.

New Australian Standards development pathways, giving stakeholders choice in how Australian Standards are developed.

Standards Australia will offer a choice of pathways for stakeholders to choose from to suit their Standards development needs and deliver Net Benefit to Australia. We will help stakeholders to pursue pathways outside Standards Australia if that better fits their requirements. For example: stakeholders may wish to apply to ABSDO* to become accredited Australian Standards developers and do their own work; highly autonomous committees could draft Standards to ABSDO requirements but drawing upon Standards Australia technical support. We encourage competition.

What happens next?

Standards Australia is doing an interim assessment of the 1400 projects on our books to identify priority projects and projects that are not progressing satisfactorily.

We will be reporting back to stakeholders before October 1, 2008 on project status. Some projects that are not progressing will need to be repackaged. We will advise how these projects can be repackaged and re-submitted for consideration under the New Business Model. Other projects will be earmarked to move quickly through the re-engineered Australian Standards development process.

For more information, please go to www.standards.org.au or call us on 1800 035 822

* The Accreditation Board for Standards Development Organisations: www.absdo.org.au