



National Greenhouse and Energy Reporting System: Regulations Discussion Paper: October 2007

Submission from Standards Australia

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Summary

The delivery of an efficient energy market needs to be based on sound and robust data and analysis. The key to this is to link reporting to international standards.

The relevant international standards, ISO 14064 and ISO 14065, cover inventory definition, reporting requirements, validation and verification and accreditation. They are policy neutral. ISO 14064 has been adopted in virtually identical terms as an Australian standard (AS ISO 14064).

As the regulations and guidance material for the Australian reporting scheme are developed, the first point of reference should be AS ISO 14064. This would reflect stakeholder views, be consistent with current AGO reliance on international standards, ensure that our international reporting is in a form comparable with other national schemes as they, too, come to cross-reference 14064, and avoid 'reinventing the wheel'.

The form of cross-referencing might be along the lines that, for example, 'quantification [or monitoring, reporting, validation, verification, etc.] in accordance with AS ISO 14064 will be deemed to comply with this regulation'. It may be necessary, however, to provide additional bridging language in the regulations and related material (such as the *AGO factors and methods Workbook* and reporting templates) to implement specific aspects of the Australian scheme. ISO guidance material may also be of assistance as it becomes available.

As the Australian member of ISO, Standards Australia can assist in ensuring optimum compatibility with international standards. Standards Australia looks forward to being closely involved with AGO in the development of regulations and any related guidance material. Standards Australia itself has extensive experience with adopting international standards.

In response to question 21 at page 36 of the paper, Standards Australia believes there are no reasons why Scope 1 and Scope 2 greenhouse gas emissions of corporations should not be reported and published separately (as AS ISO 14064 sets down).

Using ISO 14065 as the basis for accreditation will create confidence that those who assert they have expertise in measurement and greenhouse reduction technologies are in fact qualified. Standards Australia wishes to work with AGO to use 14065 to achieve the objectives of the Australian scheme. Australia is adopting 14065 as an Australian standard.

Standards Australia would like to be involved in the proposed focus group on external auditors. There may be other focus groups also to which Standards Australia can make a contribution.

Standards Australia agrees that governments and business alike are on a 'learning curve' at this stage of developing the emissions trading scheme. If the key to the implementation of the emissions trading scheme is capacity building in business, then it seems important to draw upon the expertise that already exists in ISO and the standards and accreditation community.

Introduction

1. Standards Australia welcomes the opportunity to comment on the discussion paper and looks forward to further consultation as regulations and guidance material are produced. Greenhouse issues and emissions trading is a new field where expertise is still relatively thin and sharing of knowledge between the Government and stakeholders is particularly important: no-one has a monopoly of wisdom in the development of a robust and transparent emissions trading reporting scheme.

Standards Australia and the International Organization for Standardization (ISO)

2. Standards Australia meets Australia's need for contemporary, internationally aligned standards and related services. Standards Australia is a coordinator in the voluntary standards field, an accreditor of other standards developers, and a producer of consensus-based Australian Standards that deliver benefits to the public and serve the national interest.

3. Standards Australia is a non-government, not-for-profit organisation. Standards Australia is recognised by the Australian Government as the Australian member of ISO and the International Electrotechnical Commission (IEC). ISO has 157 national members and is based in Geneva. The Deputy Chairman of Standards Australia, Dr Alan Morrison, is to be President Elect of ISO for 2008 and President for 2009-10.

4. Many Australian standards are based on international equivalents. The key international standard in greenhouse gas reporting (ISO 14064) has been adopted in almost identical terms by Australia (see below).

Why is standards-based reporting important?

5. Standards Australia agrees with Minister Turnbull that the delivery of an efficient energy market needs to be based on 'sound and robust data and analysis'.¹ The credibility of data, in turn, depends upon measurement and reporting protocols being soundly based and widely accepted.

6. It will be the integrity of reporting that will determine, on one side of the ledger, how much greenhouse gas is being generated and by whom, and, on the other side, who is cutting greenhouse emissions and by how much. This reporting will determine who needs to buy credits and who is able to sell them, the very basis of the market. Without precise and trustworthy measurement of both emissions and abatement, confidence in the market will be undermined.

7. Standards Australia believes that basing reporting for the Australian scheme on international standards, as adopted in Australia, is the only way to properly launch the Australian scheme and will go a long way to ensuring the scheme's acceptance by Australian business and the Australian community. Like all international (and Australian) standards, the greenhouse reporting standards are based on consensus between affected parties, which makes them more likely to be accepted by business.

The use of standards developed through ISO's recognized, consensus based process will build trust in a market beset by mistrust. The building of such trust is essential not only for governments, business and investors, but also for the planet, its climate and its people moving forward.²

8. The ISO standards are unambiguous and transparent and allow for flexibility, new technologies and international developments. They provide the clearest, simplest and strongest way to report reductions, describe how the reductions have been achieved and determine who is qualified to do the reporting. Crucially, also, they are directed towards entity and project level reporting rather than being on a national inventory basis and using sector estimates.

9. Using internationally recognised reporting standards as the basis for the Australian emissions trading scheme allows commonality across the global economy and confirms Australia's recognition of the need for consistency and transparency between schemes around the world. The international standards address the fundamental problems faced in other schemes, notably Europe, where emissions were difficult to measure and abatement projects difficult to quantify.

10. Using internationally recognised standards will also help Australia show that it is meeting its international reporting obligations under the United Nations Framework Convention on Climate Change and to the International Energy Agency. Australia's record will be internationally comparable, although the details and the policy underpinning of its emissions trading scheme may well differ from schemes in other jurisdictions.

11. The Secretary of the ISO committee that produced the international standards has written:

Those developing ISO 14064 and ISO 14065 recognized that voluntary and mandatory climate change programmes have or are being developed in many jurisdictions and that there is a need for consistency in GHG quantification, verification and accreditation approaches to reduce duplication, minimize costs and provide for comparability. In response, they developed a set of standards that:

- are GHG policy neutral;
- can be applied across organization and project types, sizes and sectors;
- satisfy an important market need;
- involve a wide range of stakeholders;
- act as a common "building block" to initiatives or GHG programmes;
- are auditable (i.e., validation/verification, accreditation).³

AS ISO 14064 is the key to a regulatory scheme

12. AS ISO 14064 has three separate parts, setting out principles and requirements for the complete range of greenhouse actions:

- *AS ISO 14064.1: 2006, Greenhouse gases – Part 1: Specification with guidance at the organization level for quantification and reporting of greenhouse gas emissions and removals.* This part addresses: designing,

running and reporting greenhouse gas inventories at the company or organisation level; setting organisational boundaries and emission boundaries, quantifying emissions and removals, and identifying areas where greenhouse gas management can be improved; inventory quality management, reporting, internal auditing, and verification.

- *AS ISO 14064.2: 2006, Greenhouse gases – Part 2: Specification with guidance at the project level for quantification, monitoring and reporting of greenhouse gas emission reductions or removal enhancements.* This part focuses on projects designed to reduce emissions or increase removals. It provides: principles and requirements for setting project baselines and for monitoring, quantifying and report project performance relative to baselines; the basis for projects to be validated and verified.
- *AS ISO 14064.3: 2006, Greenhouse gases – Part 3: Specification with guidance for the validation and verification of greenhouse gas assertions.* This part covers the verification of inventories and validation or verification of projects. It describes the process for validation or verification, including planning, assessment, and evaluation of assertions.

13. As the designation ‘AS’ indicates, in October 2006 each part of the international standard was adopted as an Australian standard, in identical terms, except for one amendment.⁴ The Standards Australia committee which worked on the adoption included representatives of A3P (Australian Plantation Products and Paper Industry Council), Australian Chamber of Commerce and Industry, Cooperative Research Centre for Greenhouse Accounting, Consumers’ Federation of Australia, Department of Natural Resources and Water (Queensland), Engineers Australia, JAS-ANZ, Minerals Council of Australia and New South Wales Greenhouse Gas Abatement Scheme. Australian Standards may be purchased online from Standards Australia’s publisher, SAI Global, at <http://www.standards.com.au>.

14. The discussion paper notes that ‘[p]revious consultation has shown widespread stakeholder support for the use of definitions based on [international standards, including 14064]’.⁵ A related international standard is the *Greenhouse gas protocol – Corporate accounting and reporting standard* of the World Business Council for Sustainable Development and World Resource Institute (the GHG Protocol). ISO worked closely with both of these bodies and other international organisations in the development of the ISO standards and is at present working on a memorandum of understanding to promote joint use of ISO 14064-1 and the GHG Protocol.

15. The paper refers explicitly to 14064 only to note that the standard calls for separate reporting of Scope 1 (direct) and Scope 2 (indirect) emissions.⁶ The paper endorses separate reporting. Standards Australia agrees that Scope 1 and Scope 2 emissions should be reported separately. Thus, in response to question 21 at page 36 of the paper, Standards Australia believes there are no reasons why Scope 1 and Scope 2 greenhouse gas emissions of corporations should not be reported and published separately.

16. AGO has already called up ISO 14064 in its Greenhouse Challenge Plus reporting guidelines and independent verification guidelines and plans to do so in the revision of its Greenhouse Friendly verification guidelines. It has also referenced the AS ISO 14040 series on environmental management systems in its Greenhouse Friendly guidelines. It should continue to draw upon international standards.

17. As the regulations and guidance material for the Australian scheme are developed, the first point of reference should be AS ISO 14064. This would reflect existing stakeholder support for cross-referencing 14064, would be consistent with current AGO reliance on international standards, ensure that our international reporting is in a form comparable with other national schemes as they, too, come to cross-reference 14064, and avoid 'reinventing the wheel'.

18. The form of cross-referencing might be along the lines that, for example, 'quantification [or monitoring, reporting, validation, verification, etc.] in accordance with AS ISO 14064 will be deemed to comply with this regulation'. It may be necessary, however, to provide additional bridging language in the regulations and related material (such as the *AGO factors and methods workbook* and reporting templates) to implement specific aspects of the Australian scheme. ISO guidance material may also be of assistance as it becomes available.

19. As the Australian member of ISO, Standards Australia can assist in ensuring optimum compatibility with international standards. Standards Australia looks forward to being closely involved with AGO in the development of regulations and any related guidance material.

Standards Australia's experience with international standards

20. Standards Australia itself has extensive experience with adopting international standards. This experience stands it in good stead to assist AGO with developing the linkages between Australian regulation and international standards.

21. Australian standards are based on international standards to the maximum extent feasible. Around 35 per cent of Australian standards have been adopted from international standards without modification; if the Australian standards adopted *with* modifications are added to this figure, then around 42 per cent of Australian standards have been adopted from international standards. Looked at another way, in the cases where alignment was possible (that is, where an international standard covered the same ground as an Australian Standard) 84 per cent were adopted without modification and a further 13 per cent were adopted after modification.⁷

22. Standard Australia complies with the World Trade Organization's *Code of good practice for the preparation, adoption and application of standards*. Among other things, the code commits Standards Australia to use international standards, or relevant parts of them, as a basis for the standards it develops (except where the international standard would be ineffective or inappropriate) and to participate in the preparation of relevant standards by relevant international standardizing bodies.⁸

23. Obviously, there are drafting issues attached to the use of standards (including international standards) in Australian regulation. **Attachment A** to this submission is *Standardization guide No. 9: Preparation of standards for legislative adoption*. The guide is produced by Standards Australia in consultation with Parliamentary Counsel in the various jurisdictions and addresses technical issues. Aspects of cross-referencing international standards in regulation are also taken up in a recent ISO-International Electrotechnical Commission publication (**Attachment B** to this submission – separate document).

ISO 14065 and external auditing

24. The paper at page 41 asks a number of questions about the quality assurance framework under the reporting scheme, including the expertise and qualifications needed by external auditors, how these would be assessed, how audits would be conducted and reported, and how consistency would be ensured. Standards Australia notes and supports the suggestion from AGO at the briefing on 29 October that *ISO 14065: 2007 Greenhouse gases – Requirements for greenhouse gas validation and verification bodies for use in accreditation or other forms of recognition* provides an approach to addressing these issues.

25. In a new ‘industry’ like greenhouse validation and verification it is important to establish objective benchmarks to guard against unqualified practitioners and charlatans. Again, international standards offer a way forward. (ISO 14065 has not yet been adopted as an Australian standard but arrangements are in hand for this to be done as soon as possible.) The rationale for ISO 14065 is given by the Secretary of the ISO Committee that produced it:

The aim of GHG validation or verification is to give confidence to parties that rely upon a GHG assertion or claim, for example regulators or investors, that the bodies providing the declarations are competent to do so, and have systems in place to manage impartiality and to provide the required level of assurance on a consistent basis. ISO 14065 provides requirements for bodies that undertake GHG validation or verification using ISO 14064 or other relevant standards or specifications.⁹

26. Standards Australia agrees with this assessment: using 14065 as the basis for accreditation will create confidence that those who assert they have expertise in measurement and greenhouse reduction technologies are in fact qualified. The National Association of Testing Authorities also supports the use of 14065 for this purpose.¹⁰

27. Standards Australia wishes to work with AGO to use 14065 to achieve the objectives of the Australian scheme. Standards Australia would also like to be involved in the proposed focus group on external auditors. There may be other focus groups also to which Standards Australia can make a contribution.

28. Standards Australia has recently spoken to the Auditing and Assurance Standards Board (at the Board’s invitation) on assurance and auditing issues and may speak also to the Australian Accounting Standards Board. It notes and supports the view of CPA Australia:

Before an emissions trading scheme can become operational in Australia, a workable assurance scheme must be established. Without an appropriate framework and well-trained practitioners, the reliability of data will be seriously undermined, putting the scheme in jeopardy.¹¹

Capacity building and the learning curve

29. Standards Australia agrees with AGO (at the briefing on 29 October) and others that governments and business alike are on a 'learning curve' at this stage of developing the emissions trading scheme. The Australian Industry Group-Sustainability Victoria survey confirms that business at this stage has a generally poor understanding of greenhouse and emissions trading issues.¹² The lack of reporting standards is said to be adding to uncertainty in business.¹³

30. If the key to the implementation of the emissions trading scheme, including reporting, is capacity building in business sectors, then it seems important to draw upon the expertise that already exists. Standards Australia recently welcomed to Australia, Alan Bryden, Secretary-General of ISO, to talk about ISO's work in climate change issues. Mr Bryden represents the current body of knowledge on greenhouse emissions and trading and Standards Australia is the continuing link to this international body of knowledge.

31. Standards Australia itself has knowledgeable members in its relevant committees, supported by its own project management staff and consultants. Standards Australia stands ready to work with AGO and other government agencies to assist in capacity building in whatever way is appropriate. This might include, for example, sponsoring further visits from ISO experts, contributing to workshops for business representatives, facilitating and responding to feedback on the operation of reporting standards, and keeping Australian government and business in close touch with continuing ISO work, including the development of the proposed ISO 14066, which will specify competencies for validators and verifiers.

Conclusion

32. Standards Australia believes the Government has made important first steps towards constructing a workable reporting system on greenhouse gases. It believes, further, that AS ISO 14064, ISO 14065 and, potentially, ISO 14066, provide a sound basis for the reporting system. It looks forward to collaborating with AGO in this work.

33. The key to getting the Australian scheme right will be to effectively link the Australian regulations and any guideline material to the international standards. This will allow Australia to leverage off the accumulated expertise that exists internationally and to develop a scheme that serves both Australian objectives and the need to deal with the international problem of climate change.

34. Standards Australia looks forward to further consultation on the detail of regulations and supporting material and to the proposed focus groups, particularly the group on external auditors. In the meantime, it can provide any further information AGO requires on international standardisation issues.

Attachment A: Standardization guide No. 9: Preparation of standards for legislative adoption

1. Introduction

This Standardization Guide was prepared by Standards Australia in consultation with the Parliamentary Counsel's Committee. The Parliamentary Counsel's Committee has as its members the Heads of all parliamentary counsel offices in Australia and New Zealand and the Head of the Commonwealth Office of Legislative Drafting and Publishing.

This Standardization Guide is a guide for committees preparing Standards intended for adoption in legislation, and provides direction on drafting style only, not on technical content.

There are specific requirements imposed by legislation and legislative drafting principles and conventions on what can or cannot be adopted in legislation and how it can be adopted.

Legislation provides for contractual and administrative provisions and therefore such provisions are not to be included in standards.

The policy of Standards Australia is to base Australian Standards on International Standards to the maximum extent feasible and to use the World Trade Organization (WTO) Agreement on Technical Barriers to Trade (commonly referred to as the TBT Agreement) as a benchmark. Also Australian Standards are to satisfy the provisions of the Closer Economic Relations Agreement with New Zealand.

Adopting standards in legislation requires adequate processes to ensure these standards are justified, maintained as current and are appropriately drafted and called up.

2. Objective

The objective of this Standardization Guide is to provide guidelines that will enable the technical committees to draft *Standards for Legislative Adoption* that are -

- (a) suitable in format for referencing; and
- (b) written in clear, concise and user-friendly terms.

Such *Standards for Legislative Adoption* may be Australian Standards, Joint Australian/New Zealand Standards, or other documents.

3. Definitions

For the purpose of this Standardization Guide, and for use in Standards for Legislative Adoption the following definitions apply:

Australian Standard – is a Standard published by Standards Australia and prepared by Standards Australia or a body accredited by its Standards Accreditation Board. The term 'Australian Standard' is a registered trademark of Standards Australia.

Inspecting Authority – is the body having statutory powers to inspect and approve under legislation.

Legislation – is an Act of Parliament or regulations or other kind of subordinate legislation.

Part – is a part of a Standard, a separate publication (book) of a related suite of Standards. For example, AS 1530.1 is Part 1 of AS 1530.

Primary Adopted Standard – is a Standard directly adopted in whole or in part in the legislation.

Regulatory Authority – is the body having statutory powers to administer legislation.

Requirement - when applied to a Standard, is a prerequisite which must be followed for compliance with the Standard.

Section – when applied to a standard is a clause or group of clauses with a common purpose. All documents shall comprise two or more sections. The sections in each document shall be numbered with Arabic numerals beginning with 1. The numbering shall be continuous up to but excluding any Appendices and includes the numbering of parts when appropriate, eg 1.2 or 1.12.

Standard (see also ISO/IEC Guide 2) – is a document established by consensus and approved by a recognized body, which provides for common and repeated use, rules, guidelines or characteristics for activities or results, aimed at the achievement of the optimum degree of order in a given context.

Note: A recognized body is normally a national standards body.

Standard for Legislative Adoption – is a Standard written in accordance with this document for adoption in legislation. It may be a new Standard, a revised Standard or an Amendment to an existing Standard.

If a *Standard for Legislative Adoption* is to include definitions, whether of an administrative or technical character, they must be consistent with any definitions incorporated in the relevant legislation, code or specification. Terminology and provisions in Standards need to be compatible with established legislative drafting principles.

Additionally, care must be taken to ensure that definitions are consistent with those in other Standards and related documentation.

4. Revision and Amendments to Standards

(a) *Revision of Standards*

Standards are regularly reviewed, not only to ensure that the information contained within them represents current practice but also to ensure comments by interested parties are given every possible consideration in the life of a Standard. This review may result in a revision of a Standard and the publishing of a new edition.

Once a new edition of a Standard is published the previous edition of the Standard is deemed to be superseded in terms of representing current practice. A superseded standard will be kept publicly available as an “Available Superseded Standard” during the phased implementation of legislative requirements, or as an “Obsolescent Standard” for servicing of older equipment.

(b) *Amendments to Standards*

After a Standard has been published new information may be presented to the committee or errors found in the printed document. When this occurs it is usual to issue an Amendment to the Standard. Amendments are numbered, one, two etc. By way of example, if an existing standard AS XXXX – 2006 is amended for the first time, then the Amendment is designated as Amendment 1 to AS XXXX – 2006. The Amendment is published as a separate document. If a second amendment is published it does not supersede the first amendment, and is published as a

separate document, Amendment 2 to AS XXXX – 2006. In this example there are three currently available documents, namely AS XXXX – 2006, Amendment 1 to AS XXXX – 2006 and Amendment 2 to AS XXXX – 2006.

(c) *Development Process*

Both an amendment and a revision to a standard go through the normal standards development process.

5. Purpose of Standards

Standards are developed for a number of purposes. These include the following:

- (a) Standards that are used to specify requirements to achieve at least minimum objectives of safety, quality or performance of a product or service. These Standards may be developed for voluntary or mandatory applications.
- (b) Regulatory compliance - Standards that are used to specify minimum least-cost solutions to technical requirements expressing characteristics, performance and design criteria compatible with the function of legislation
- (c) Contractual purpose - Standards that serve as purchasing specifications or technical conditions of contract between two parties.
- (d) Guidance - Standards that may be intended for educational purposes and which include recommendations, or administrative or project management procedures. In general, these Standards will not be adopted in either legislation or contract specifications.

6. Format for Standards

To accommodate the various purposes of a Standard, it will often be necessary to arrange the contents such that the requirements intended to be adopted in legislation are clearly separate from those which are not relevant for those purposes.

In some cases, it may be difficult to create a clear division between the various provisions in a Standard, and practical drafting considerations may make it necessary to develop other means of segregation. A means of segregation is to place the requirements that are not to be adopted in legislation in a separate section or part. The sections or parts that contain regulatory compliance provisions are not to make reference to the section or part that contains information not necessary for legislative compliance. If necessary, a separate Standard or a series of Standards might be developed to meet the needs of all concerned.

An Application Provision in a Standard should deal with the legislation, contract or other means by which the Standard is or is likely to be mandated or applied.

A Standard will have a subject matter to which the individual standards set out in it apply. The Scope of the standard should be as broad as that subject matter, i.e. the Scope should not be limited in the standard to only some of the subject matter. If a particular application of the standard is to be narrower than the subject matter of the standard, the legislation, contract etc. that is applying the standard should be left to narrow that application of the standard.

7. Drafting Style for Standards for Legislative Adoption

A Standard for Legislative Adoption must be written in such a manner that it can be determined with certainty whether or not any particular provision complies with that

Standard. When referenced in legislation, Standards and their Amendments become part of the legislation.

Each provision must be expressed in clear, concise, explicit and unambiguous language, so that it possesses the potential for consistent interpretation and administration. General drafting of the Standards shall be in accordance with the SA Style Manual and Standardization Guide No. 1, *Preparing Standards*.

8. The use of Must, Shall and Should

In accordance with the International Organization for Standardization (ISO) Directives, the word 'shall' is used to state that a requirement is strictly to be followed in order to conform to a Standard. Consequently, there can be no deviation from that requirement, other than a specified tolerance.

It is noted that in legislation and specifications it is common to use the word 'must' to express a requirement. Where Standards are adopted in legislation, the word 'shall' in the Standard should be considered as equivalent to 'must' in the legislation.

The word 'should' introduces a suggestion or recommendation that is not a requirement. It is not necessary that such recommendations or suggestions be followed in order to comply with the Standard.

Within a Standard for Legislative Adoption, 'should' must not be used in Clauses or in *Normative Appendices*, but may be used in *Advisory Notes* or *Informative Appendices*.

9. Normative Appendices

A *Normative Appendix* is an integral part of the *Standard for Legislative Adoption* and compliance with such an appendix is required for compliance with the Standard. *Informative Appendices* are provided for commentary or additional guidance on the use of the Standard. Informative Appendices can only be referenced to the informative content of the Standard such as an advisory note.

Normative Appendices must be clearly marked as *Normative* and must be referenced from a *Clause* in the *Standard for Legislative Reference*.

10. Mandatory Notes to Tables and Figures

Standards for legislative adoption are not to contain mandatory notes to tables and figures. Symbols are to be used in lieu of the 'notes' to draft mandatory requirements in footnotes to tables and figures. This drafting style will reduce confusion from standards users, in that all notes in *Standards for Legislative Adoption* will be advisory notes only. The use of notes to tables and figures should be minimised.

11. Advisory Notes and Informative Appendices

The use of *Advisory Notes* and *Informative Appendices* needs to be kept to a minimum and carefully scrutinised. This is necessary as *Advisory Notes* and *Informative Appendices* can be interpreted to be part of the requirements for good practice and so a court may determine that they are effectively requirements.

If *Advisory Notes* and *Informative Appendices* must be used in a *Standard for Legislative Adoption*, they should only be used to give guidance to the user on recommended considerations or technical procedures, or to provide an informative

cross-reference to other documents or publications and must not suggest that a higher level of compliance than required in a clause is necessary or preferred, nor provide alternatives to or allow exemptions from the normative content.

Informative Appendices must be referenced from an *Advisory Note* in the *Standard for Legislative Adoption*.

As the mode of expression of each requirement in the Standard must be unambiguous, if an *Advisory Note* is to be used it must be separated from the requirements and expressed in such a way as to make it clear that they are included only for guidance.

If Notes are used in the document, they must be differentiated from the main text by a smaller font size and should be indented from the main text. A notice must be inserted into the Preface, as follows:

“Notes used in this Standard are of an advisory nature only and are used to give explanation or guidance to the user on recommended considerations or technical procedures, or to provide an informative cross-reference to other documents or publications. Notes to clauses in this Standard do not form a mandatory part for compliance with this Standard”.

12. Commentaries

Commentaries provide additional information on the derivation and scope of specific Clauses in the *Standard for Legislative Adoption*.

Ideally, *Commentaries* should be published as a separate, related Part of the Standard with paragraph numbers aligning with the clause numbers in the *Standard for Legislative Adoption* (i.e. Commentary on Clause 2.1 is provided by Paragraph C2.1).

If the *Commentary* is relatively short it may be included in the *Standard for Legislative Adoption* either as an *Informative Appendix* or directly following the relevant *Clause*, numbered as above.

If it directly follows the relevant *Clause*, it must be differentiated from the main text, and have a notice inserted in the Preface, as follows:

“This Standard incorporates a Commentary on some of the clauses. The Commentary directly follows the relevant Clause, is designated by ‘C’ preceding the clause number and is printed in italics in a shaded panel. The Commentary is for information only and does not need to be followed for compliance with the Standard”.

Commentary documents may make reference to the Standard, however the normative clauses in the standard are not to make reference a commentary.

13. Participation in Standards Development

Because of extensive stakeholder representation built into the standards development process and because the process achieves consensus, regulators are assured that there is thorough consultation involved in the establishment of a standard and that there is also as a consequence, good stakeholder commitment and ownership of the resulting standard.

The technical requirements of various regulatory authorities is accommodated by their participation on the technical committees preparing the standard, and comments submitted at the public comment stage.

14. Compatibility with Legislation

Care must be taken during the drafting of a *Standard for Legislative Adoption* to ensure that its provisions are entirely compatible with existing (and if possible, proposed) legislation and do not attempt to expand the coverage of that legislation.

Standards must not prescribe any technical or other requirements differing from those prescribed by legislation.

Where a requirement exists in legislation, no part of a Standard intended for legislative use may contain contradictory or incompatible requirements.

A *Standard for Legislative Adoption* must not repeat requirements that are already covered in legislation. Where overlapping is considered unavoidable for the sake of completeness of the Standard, the extent of duplication and compatibility with legislation must be referred to the regulator for specific attention.

15. Performance and Prescriptive Standards

Every effort should be made in the drafting of Standards to incorporate details of the 'Objectives' and 'Performance' aims of the particular Standard, the criteria and testing or other approved form of verification regarded as relevant to assessing performance and where possible, detailed specifications which are deemed to satisfy the performance requirements of the specified performance criteria.

An objective in the drafting of some regulations is to include 'performance' requirements and to list Standards or specifications which are deemed to satisfy the prescribed performance. In this way, flexibility is preserved in the application of the legislation by allowing for the developments of further Standards or specifications (using existing or evolving technology) or the adoption of alternative means which will also achieve the desired performance.

Standards for legislative adoption are structured as performance based standards or prescriptive standards (or "deemed to comply"). The performance requirements can be contained in legislation or in an Australian standard which references another Australian standard or part of a standard which is written in prescriptive form, as a complying solution.

Where Standards Australia is requested, to assist legislation, by preparing a Standard with the performance requirements in addition to the deemed to comply solution, then the performance based standard is prepared preferably as a separate document, with a separate Standard number or in a clearly differentiated separate part. The deemed to comply standard can be referenced in the normal way and does not reference any performance based standard.

16. General Requirements for Standards for Legislative Adoption

It is not appropriate for specific administrative procedures or responsibilities to be referred to in a Standard, as these may change over a period of time or may vary from area to area depending on local conditions.

A *Standard for Legislative Adoption*, must not -

- (a) specify or define the respective rights, responsibilities or obligations as between the Standards body and any manufacturer, supplier or purchaser;
- (b) specify or define the responsibilities of any person, or of any statutory authority or other body;
- (c) require the submission of approval details to any person, authority or other body;
- (d) specify that a detail, shall be submitted to the Standards body or one of its Technical Committees for an expression of opinion; or
- (e) permit a departure from the code, rule, specification or provision at the discretion of the manufacturer or purchaser, or by arrangement or agreement between the manufacturer and purchaser.

If the *Standard for Legislative Adoption* is required to cover any of the above matter, then those provisions shall be located in an *Informative Appendix, Commentary or Advisory Note*.

In order that a Standard be suitable for legislative adoption, it must not include powers, functions or responsibilities that the legislation does not give. A Standard should not specify requirements outside the ambit of legislative policy, nor should it incorporate inappropriate contractual or administrative provisions. For example, a Standard must not allow a discretion to be exercised by a body or authority other than the one which is responsible by law for the administration of the legislation which call up the Standard; a Standard must not add to or detract from the legislative duties and liabilities of the responsible authority.

17. Reference to Approval Procedures

Compliance with the principles set out in this Guide will prevent the inclusion of any provisions in Standards which impose a statutory responsibility or liability on any person or body or which prescribe a particular administrative procedure to be followed by statutory authorities. In particular, the word '*approved*' should not occur in the requirements of *Standards for Legislative Adoption*.

Approval means the granting of formal permission in relation to an application or proposal, with or without conditions, given by the body having statutory powers under legislation.

18. Cross-reference

Care must be taken to ensure that where a *Standard for Legislative Adoption* includes a compliance cross-reference to any other Standard, either the other Standard is drafted in accordance with the principles laid down in this Standardization Guide, or that the nature of the cross-reference is such as to call up only the particular provisions or parts of the other Standard that are suitable.

Cross-reference to Standards that are in course of preparation, is not permitted in published Standards.

Secondary/tertiary references are to be kept to a minimum, and such references are to be made only where it is essential to the process of proving compliance to the standard.

19. Adoption of Standards and Amendments

There are a number of ways that standards are referred to for the purpose of adoption in legislation and they are as follows:

- by standard number (and title)
- by standard number (and title) and year of publication
- by standard number (and title), year of publication, and as amended from time to time
- by standard number (and title) and year of publication, with each amendment separately referenced.

There are also various ways of adopting amendments, one is to refer to the standard and year of publication, with the added words of “as amended from time to time”. Another way is to refer to each amendment separately.

Regulations specify the date on which a Standard or Amendment for Regulatory Adoption and other documents come into effect.

A statement should be included in the Preface of Standards for Legislative Adoption or Amendment, stating the commencement date for inclusion/reference in the legislation where provided by the regulator.

It is desirable for the regulatory authorities and Standards Australia to agree beforehand on the Standards proposed to be called up in the next Amendment to legislation, and for the Standards in question to have information on application dates included in the Preface. This is particularly important for revisions to the major design codes.

Attachment B: Cross-referencing international standards in regulation (separate document)

Endnotes

- ¹ House of Representatives, *Daily Hansard*, 15 August 2007, pp. 4-5.
- ² K Boehmer, 'A tonne of carbon is always a tonne of carbon', *ISO Focus*, September 2007, p. 49.
- ³ Boehmer, p. 49.
- ⁴ AS ISO 14064.2 includes an amendment in relation to afforestation and reforestation. Requirements for these projects are specified in a separate Australian standard (AS 4978:1): *AS ISO 14064.2: 2006 Greenhouse gases – Part 2: Specification with guidance at the project level for quantification and reporting of greenhouse gas emission reductions and removal enhancements (ISO 14062-2:2006, MOD)*, p. 29.
- ⁵ Australian Greenhouse Office (AGO), *National Greenhouse and Energy Reporting System: Regulations discussion paper, October 2007*, Canberra, 2007, pp. 8-9.
- ⁶ AGO, pp. 9, 35.
- ⁷ Productivity Commission, *Standard setting and laboratory accreditation: Research report*, Canberra, 2009, pp. 97-98.
- ⁸ Productivity Commission, p. 97.
- ⁹ Boehmer, p. 48.
- ¹⁰ G Drake, General Manager, Corporate Services, NATA, Submission to Task Group on Emissions Trading, 6 March 2007, http://www.pmc.gov.au/climate_change/emissions/task_group/submissions/47_sub_emissionstrading.pdf, accessed 12 November 2007.
- ¹¹ G Rankin, Chief Executive, CPA Australia, *Latest developments in professional accounting and corporate governance – August*, http://www.cpaaustralia.com.au/cps/rde/xchg/SID-3F57FECA-484232A8/cpa/hs.xsl/3668_23600_ENA_HTML.htm, accessed 2 November 2007.
- ¹² Australian Industry Group & Sustainability Victoria, *Environmental sustainability and industry – road to a sustainable future: Findings of the national survey on environmental sustainable practices*, AiGroup, Canberra, 2007.
- ¹³ P Hannam. 'Australians are still carbon amateurs', *The Age (Melbourne)*, 15 October 2007, <http://www.theage.com.au/articles/2007/10/14/1192300598380.html>, accessed 9 November 2007 (quoting L Maimone, Ernst & Young).