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Australia

**Inquiry into whistleblowing protections within the Australian
Government public sector**

House Standing Committee on Legal and Constitutional Affairs

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Introduction

Standards Australia welcomes the opportunity to provide this submission to the Inquiry into whistleblowing protections within the Australian Government public sector. Our chief objective is to ensure that the Committee is aware of Australian Standards already developed in this field, including AS 8004 – 2003 Whistleblowing protection programs for entities.

Standards Australia's mission is to bring innovative and lateral thinking to important public policy areas. This approach is founded on the key elements of the standards development process, which is based on principles of transparency, balance of interests, rigorous assessment of cost and net benefit to Australian communities and commitment to consensus-driven outcomes through due process.

As a result of community concern regarding a number of high profile corporate collapses including HIH, Ansett Airlines and One.Tel, Standards Australia made a decision in 2002 to develop a suite of Corporate Governance Standards to assist all Australian organisations. These proposed Standards were intended to benefit 1.2 million private and public organisations and were the first of their kind in the world. They complemented the decision of the ASX to develop guidelines on governance for listed companies that later became the Principles of Good Corporate Governance and Best Practice Recommendations.

Standards Australia's Whistleblowing protection Standard is included within the suite of Corporate Governance Standards.

Standards Australia Overview

<http://www.standards.org.au/>

The Federal Government recognises Standards Australia as the nation's peak non-government standards development and approval body. Standards Australia prepares voluntary, technical and commercial standards for use in Australia and accredits other Australian Standards Development Organisations. It meets national needs for contemporary, internationally aligned standards and related services that enhance Australia's economic efficiency and international competitiveness.

To ensure this, a Memorandum of Understanding has existed between Standards Australia and the Commonwealth Government since 1988. Among the principal accords, are that no Australian Standard will contravene the World Trade Organisation's requirements that national standards should not be used as non-tariff barriers to free trade; and agreement that no new Australian Standard will be developed where an acceptable international standard already exists.

Standards Australia is Australia's member of the International Organisation for Standardisation (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 standards development efficiencies.

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Standards Australia has well-established links into all areas of Australian business, professions, academia and the community with more than 9,000 experts drawn from over 1,000 Nominating Organisations. It has developed standards across most sectors of the Australian economy, in traditional industries such as goods and services, engineering and construction; in other technical areas such as health and food; in emerging new areas of technology such as e-health; as well as in less technologically based subjects such as complaints handling and risk management.

Australian Standards developed by Standards Australia are readily accessible, consensus-based, voluntary documents with which compliance is not mandatory unless the Standard is incorporated into law or called up in contractual arrangements. 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.

Whistleblowing

Many organisations, particularly large organisations, for a number of reasons, do not have the capacity or mechanisms to capture bad news (e.g. fraud, corruption, unsafe practices). Often, this is due to potential whistleblowers not being given adequate protection and assurances by the entity. The Sarbanes-Oxley Act in the United States and Corporation Law reforms in Australia require whistleblowing systems. Standards Australia produced the standard on whistleblowing to assist organisations meet these requirements. Organisations can potentially save huge amounts of money if effective whistleblowing systems allow fraud and serious safety matters to be reported and resolved.

Objectives of AS 8004 – 2003 Whistleblowing protection programs for entities

The Objectives of AS 8004 – 2003 Whistleblowing protection programs for entities are to:

- ' ... provide guidance for entities seeking to implement a whistleblower protection program. The proposed objectives of such a whistleblower protection program are to —
- (a) encourage the reporting of matters that may cause financial or non-financial loss to the entity or damage to the entity's reputation;
- (b) enable the entity to effectively deal with reports from whistleblowers in a way that will protect the identity of the whistleblower and provide for the secure storage of the information provided;
- (c) establish the policies for protecting whistleblowers against reprisal by any person internal or external to the entity; and
- (d) provide for the appropriate infrastructure including the appointment of a

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'Whistleblower Protection Officer' and a 'Whistleblower Investigations Officer' and alternative means of reporting.'

History of AS 8004 Suite of Standards

The development of the AS 8000 suite of Standards began in July 2002 with the inaugural meeting of Committee MB004 Business Governance. This meeting was chaired by Henry Bosch AO and the following organisations were represented:

- Australian Institute of Company Directors,
- Australian National Audit Office,
- Australian Prudential Regulation Authority,
- Australian Stock Exchange,
- Chartered Secretaries Australia,
- Corporate Crime Liaison Group,
- CPA Australia,
- Health Insurance Commission,
- Independent Commission Against Corruption,
- Institute of Internal Auditors Australia,
- Investment & Financial Services Association Ltd,
- Law Council of Australia,
- National Institute for Governance,
- Society of Consumer Affairs Professionals,
- St James Ethics Centre,
- Transparency International Australia, and
- Victoria University of Technology.

The following terms of reference were agreed on by the Committee:

'Standardisation and guidance in the field of organisational governance covering good governance principles, frameworks and benchmarks applicable to organisations of all types and sizes that are establishing and maintaining accountability structures and processes to meet business and regulatory needs.'

This Committee went on to develop the following Australian Standards dealing with corporate governance:

- AS 8000 – 2003 Good governance principles
- AS 8001 – 2003 Fraud and corruption control
- AS 8002 – 2003 Organisational codes of conduct
- AS 8003 – 2003 Corporate social responsibility, and
- AS 8004 – 2003 Whistleblower protection programs for entities.

These documents were all developed using the internationally recognised standards development process that is underpinned by the principles of consensus and transparency. During the public

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comment stage of this process over 800 submissions were received from interested parties.

In 2004 a series of Australian Handbooks were written to support these Standards.

HB 400 – 2004 Introduction to corporate governance,
HB 401 – 2004 Applications of corporate governance,
HB 402 – 2004 Business planning,
HB 403 – 2004 Best practice board reporting,
HB 405 – 2004 Disclosure and transparency frameworks,
HB 407 – 2006 Corporate governance for small business,
HB 408 – 2006 Corporate governance culture

Content of AS 8004 - 2003 Whistleblowing protection programs for entities

The Standard defines three structural elements required for a whistleblowers protection program.

- i. Commitment – a commitment to reporting of corrupt and illegal practices by all individuals in the organisation.
- ii. Protection policy – this policy should detail the entity's commitment, articulates the benefits of, mechanisms for reporting and protection for whistleblowers.
- iii. Resourcing – details the infrastructure needed to support a Whistleblowing program.

The Standard defines 12 operational elements including:

- a. Appointment of a designated WB protection officer
- b. Appointment of a designated WB investigations officer
- c. Independence of the above
- d. Reporting mechanisms
- e. Confidentiality
- f. Communications
- g. Investigation
- h. Immunity
- i. Reporting
- j. False reporting
- k. Unauthorised release of information
- l. Codes of conduct

The Standard defines four maintenance elements namely:

- Education and training,
- Visibility and communication,

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- Review, and
- Accountability.

The Standard also contains a checklist of matters that should be addressed in a whistleblower program.

Status of AS 8004 – 2003 Whistleblowing protection programs for entities

Committee MB-004 is currently chaired by Mr Alan Morrison (President elect of ISO).

Committee MB-004 Business Governance is currently reviewing all of the AS 8000 series of Standards to ensure that they remain up-to-date with changes in legislation and other changes within the industry. AS 8004 – 2003 is currently undergoing review as part of this program.

Next Steps

1. Standards Australia has enclosed a copy AS 8004 – 2003 Whistleblower protection program for entities and would welcome the opportunity to meet with the House Standing Committee to discuss the Standard and our current review process and outcomes.
2. Standards Australia invites the Federal Government to place an observer on Committee MB-004 Business Governance during the review of AS 8004¹.

Conclusion

Standards Australia looks forward to discussions with the House Standing Committee on Legal and Constitutional Affairs and the Government on the potential for utilising AS 8004 – 2003 Whistleblower protection program for entities and its revision to enhance protection for whistleblowers in the Australian Public Service.

Standards Australia is dedicated to setting best practice benchmarks to meet the growing expectations of the Australian community, industry and government. It remains committed to enhancing the social, environmental and economic well-being of all Australians. Standards Australia ensures the effective development of standards and recognition of other standardisation bodies by providing an active forum for discussion, debate and consensus.

¹ Federal Treasury is providing an observer to sit on Standards Australia's Committee MB-004 Business Governance, during the review of AS 8003 – 2003 *Corporate Social Responsibility*.