

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

**INQUIRY INTO ACCESS TO AUSTRALIAN STANDARDS
ADOPTED IN DELEGATED LEGISLATION**

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 14 AUGUST 2015**

SESSION FIVE

Members

Mr P. Abetz (Chair)
Hon Robin Chapple (Deputy Chair)
Hon Mark Lewis
Ms S.F. McGurk
Mr P. Papalia
Hon Martin Pritchard

Hearing commenced at 12.31 pm**Mr DAVID SMITH****Deputy Director General, Department of the Premier and Cabinet, sworn and examined:**

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I need to ask you to take either the oath or the affirmation.

[Witness took the oath.]

The CHAIR: You will have signed a document entitled “Information for Witnesses”. Have you read and understood that document?

Mr Smith: Yes, thank you.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record and please be aware of the microphone and try to talk into the microphone; ensure you do not cover it with papers or make too much noise near it. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement before we start asking questions, David?

Mr Smith: No; I am at the committee’s pleasure.

The CHAIR: I take it you are aware that the core issue we are seeking to address is the accessibility of the public to Australian Standards when they are referred to in legislation or secondary legislation. We have the view that if legislation or regulations are made, we expect people to obey them; and, if we want them to obey them, we need to also make them available freely. The memorandum of understanding between the commonwealth government and Standards Australia explicitly recognises that standards adopted into regulations may represent the minimum effective solution. However, the 2006 Productivity Commission report stated that all governments should rigorously analyse impacts before making a standard mandatory by way of regulation. In the light of this, is any guidance being provided for departments or agencies on alternatives to actually referencing standards?

Mr Smith: Thank you for that. I think we did have some advance warning of the interests of the committee. I am aware of those issues. I have to probably say that the Department of the Premier and Cabinet, which I am from, does not have a close role in those issues. The Department of Finance and, I think, the Regulatory Gatekeeping Unit—it might have changed its name; I have not kept up with it—is the body within government that is charged with addressing the issues that are raised both in that memorandum of understanding and the Productivity Commission report—in general terms, assessing regulation or regulatory proposals as they are made by agencies that they achieve their purpose and do so in an effective and efficient way.

The CHAIR: The Department of the Premier and Cabinet is not directly involved in that aspect?

Mr Smith: No.

The CHAIR: Does your department ever need to access standards?

Mr Smith: I am sure that we do. I must admit I am struggling—again having the benefit of the questions beforehand—to think of instances where that has been a necessity for us. Our work can be quite varied, as you can imagine, in different sorts of areas. We would tend probably to go straight to the agencies that are involved to find that out if we needed to.

The CHAIR: Are you aware of any moves to make the standards that are referenced in acts or regulations freely available online? Has there been any discussion that you are aware of within government on that?

Mr Smith: The short answer to that is no. I am aware of the committee's interest, and interest over a number of years. But, to be frank, in my position, it is not really an issue that has been raised with me. It is not something that we have been asked to look at or are aware that there are issues in that access.

The CHAIR: You are not aware of any discussions about a reference being on the State Law Publisher website, for example, in the regulations so you can click on it and it would sort of pop up as the other thing so it is readily available.

Mr Smith: No. I know the State Law Publisher falls within our department. Just from being prompted a bit by this committee's interest, I had a look at that. It is a case-by-case approach as far as I am aware. You can go to the State Law Publisher site and access through that national standards that are referenced. I think the national standards on early childhood is one example.

The CHAIR: That is actually available, is it?

Mr Smith: Yes.

The CHAIR: Without costs to the end user?

Mr Smith: I am not sure that I clicked the pay button.

The CHAIR: That is another one that appears perhaps.

Mr P. PAPALIA: They may have done the same thing.

The CHAIR: Some sort of arrangement with SAI Global to make that available, yes. That is interesting. We were trying to learn which ones are available, so you have taught us one that might be available.

Hon MARK LEWIS: So you can go and get any reference at the State Law Publisher?

Mr Smith: I am not sure about "any". I have not done a comprehensive look, but you can get some.

Hon MARK LEWIS: How would you get that?

The CHAIR: Just click onto it apparently and it pops up. But SAI Global would have to have entered into some kind of negotiation with the State Law Publisher to make that available.

Hon MARTIN PRITCHARD: If they were done through standards.

The CHAIR: Yes.

Mr Smith: That is right. Some of these, like the early childhood ones, were nationally developed standards, I think, established by ministers.

Hon MARK LEWIS: They are outside SAI.

The CHAIR: Perhaps it is outside of this. Perhaps it is not an Australian standard with a capital "A" and a capital "S" produced by Standards Australia.

[12.40 pm]

Mr Smith: No, no.

The CHAIR: Do you have any suggestions for the committee to consider regarding greater access to standards for Parliament, public servants, businesses, the public and so on?

Mr Smith: Again, the short answer is probably no. I must admit again, from our perspective, it is not an issue, as I said earlier, that has really been raised with us or for us. I know from time to time inquiries are made and people want to access material. Most often it is available. It might be available at a cost. Even the legislation itself, although it is a dwindling part of our revenue, for printed copies of legislation we attempt to recover some of the costs in doing that. The short answer is no, I am not aware that people have issues accessing it.

The CHAIR: The obvious issue is the copyright issue. Are you aware of any other states or territories raising issues of public or parliamentary access to standards at COAG or commonwealth level?

Mr Smith: No; I am not. Again, with the benefit of foreshadowing this—it might test my memory a little bit—certainly I am not aware that it has been raised as an issue in COAG. COAG—at least the meetings of Prime Ministers, Premiers and chief ministers—tends to, with mixed success perhaps, deal with more strategic and higher level issues. It does not get down to individual portfolio matters. I am not aware. I was reminded earlier this week that there was in, I think, 2007 adoption of guidelines for best practice regulation making, which has reference to some of the issues around the availability of standards. It is more about how those standards might be referenced in legislation and so on. To be honest, I cannot actually recall a discussion at COAG about those. They were obviously presented and adopted, but I do not remember the discussion.

The CHAIR: The Premier's Circular of 2014 requires responsible bodies to produce to the committee copies of standards that are adopted in subordinate legislation. We understand that section 32 of Victoria's Interpretation of Legislation Act 1984 states that responsible bodies must lay before Parliament copies of the standards that are adopted into the secondary legislation. What do you see as the copyright issues surrounding that?

Mr Smith: Again, at the risk of disappointing the committee, I am not a copyright expert. Those issues have not been things that we have had to look at. I am not aware—I am not saying that they are not issues, but I think that probably other organisations of government —

Hon ROBIN CHAPPLE: Given the acquisition of standards by all government departments, it could be extremely expensive over time in not only physically accessing the document, but the method you have got to do that. You have to go to a State Library and look at them in the formulation of legislation. It is quite complex. Has there ever been any analysis of the cost to government of accessing or using standards, because we are starting to understand that it could be quite significant?

Mr Smith: Again, not that I am aware of. The preparation of policies and regulations that might be reliant on standards, I guess, have a lot of costs associated with them. If there is a requirement to investigate or access to those standards, I guess that just becomes part of the cost of developing the policy and regulation. I would not claim to be an expert in this field by any means, but more and more information is available online, as I am sure the committee knows.

Hon ROBIN CHAPPLE: Unfortunately, it is not.

Mr Smith: That might be the case in the areas that you have been involved in, but in most of the areas I come across, that is the case. We have rarely had a problem. I have never had a staff member come to me, for example, and say, "I need to expend these resources to do the function." It may be that we are not in the space of developing regulations.

Hon MARK LEWIS: Do you know what the driver was behind the Premier's Circular in 2014? Was it a request from a parliamentary committee or Parliament or Parliamentary Counsel? There was obviously an issue, otherwise the Premier would not have put out a circular.

The CHAIR: It was actually our committee.

Mr Smith: That was going to be my guess. Without being around or involved in these issues at that time, I would have thought it was.

The CHAIR: My recollection is that it was in there already before I became chairman, but I think it was there because of the recognition that if we are going to assess a piece of secondary legislation and we do not know what that standard says, we cannot fully discharge our function.

Hon MARK LEWIS: Since I have been sitting on the committee, I have never seen a standard, so no-one is complying with the Premier's instructions. I wonder whether you could make some comment on that.

Mr Smith: Again, we do not get involved necessarily in all the material that comes to this committee.

Hon MARK LEWIS: You do not get involved in compliance with the Premier's instructions?

Mr Smith: On this particular one I have never had to.

Hon MARK LEWIS: Would you like to?

Mr Smith: Probably not. If there is a choice in that, no.

Hon MARK LEWIS: We have not seen a standard yet.

The CHAIR: I am not sure that we have had that many with standards. We have had a few but not that many, I do not think.

Hon ROBIN CHAPPLE: We have had quite a lot of them, especially local government. They quite often refer to this, that or the other standard. We are having a conversation amongst ourselves. We are not doing a lot of regulations at the moment. If we go back three or four years, we might have been dealing with something like 80 regs. There again, we do not review all of them now, so we do not even look at half of those that go through. They might have standards associated with them.

The CHAIR: Very true. Any other questions from the committee? Thank you very much, David.

Mr Smith: Thank you.

Hearing concluded at 12.47 pm
