

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

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

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
FRIDAY, 21 AUGUST 2015**

SESSION FOUR

Members

Mr P. Abetz (Chair)
Hon Robin Chapple (Deputy Chair)
Mr G.M. Castrilli
Ms S.F. McGurk
Mr P. Papalia
Hon Martin Pritchard

Hearing commenced at 12.15 pm**Ms MEREDITH HAMMAT****Secretary, UnionsWA, sworn and examined:****Dr TIM DYMOND****Organising and Strategic Research Officer, UnionsWA, sworn and examined:**

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

[Witnesses took the affirmation.]

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

The Witnesses: Yes.

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 microphones and talk towards them. Ensure you do not cover them with papers or make noise near them. 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 proceeding, 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 either of you like to make an opening statement?

Ms Hammat: I will make a few brief comments, if I may. Can I start by thanking the committee for the opportunity to appear before you today to outline our concerns regarding access to Australian Standards which are adopted in delegated legislation and congratulate the committee really for their work on this important issue. UnionsWA is the governing peak body of the trade union movement in Western Australia. We have endeavoured to respond to your questions. We will elaborate on them as we go through. We did want to make a statement which sets out some broader concerns. In speaking to the opening statement, there were really two main points that I wanted to make. The first was really a general submission about referring to Australian Standards in delegated legislation, without also having arrangements for that information to be widely made available really undermines the legislative function of government. The second point that we wanted to talk to you about relates specifically to the availability of Australian Standards for workers and for their unions, particularly in relation to workplace health and safety considerations. This is not just a matter which goes to the cost of obtaining those standards, which is clearly prohibitive, but also the licensing arrangements and the lack of publicly available information. They were really the two particular points that I wanted to turn to.

In relation to the general submission, perhaps that point has already been well made before this committee this morning; that is, a general view that the purpose of legislation is not only to provide frameworks and laws but also it needs to be complete in the sense that people have an understanding of what standard they are being held to or expected to adhere to. To fail to do that, I think, really undermines the legislative function of Parliament. It goes to the question of

accountability and it really goes to having a rigorous legislative process that is not eroded by way of having skeletal bills, so a lack of substance and a lack of information contained within them or not easily accessible for those people who will be dictated by them. In some cases, delegated legislation refers not just to standards but also to regulations. Certainly, we have made submissions before previous committees around the Workforce Reform Bill, which was to introduce forced redundancy for public sector workers. In this case, the delegated legislation was regulations, not Australian Standards, but at the time this was debated by Parliament, those regulations had not been drafted. They were not available and clearly there was a very problematic process in terms of being able to determine what that bill would mean in practice where much of the detail of it was simply missing. Clearly, when we talk about occupational health and safety, many Australian Standards are referred to as part of that and, whilst they exist, they are not readily available. They are often costly or difficult to obtain. That was really the specific point I wanted to turn to now in our opening comments.

[12.20 pm]

Unions have long been recognised as having an important role in health and safety and we have always advocated strongly that there be a rigorous system to protect the health and safety of workers. Serious injuries can affect a worker's long-term health, it can affect their earning capacity, it can affect their personal relationships and, tragically, workplace deaths still occur all too frequently. For these reasons, we see workplace health and safety as being a very important part of our system of workplace rights. The system of workplace health and safety is designed for the purposes of prevention rather than cure. At the heart of the system is a recognition that both employers and employees and their unions have a role in ensuring that workplaces are safe. For these reasons, our submission is that it is really essential that employees have ready access to legislation, to codes and to the Australian Standards that define what a safe workplace is. If workers are unable to access the appropriate standard, it really undermines their ability to enforce their role as a workplace health and safety rep. In effect, you cannot perform that role effectively when you cannot get access to the information. So where standards are referenced in legislation, in codes of practice, many employees may find that they want to or they need to refer to them, yet they are not readily accessible. There is a prohibitive cost for accessing Australian Standards and I think there have been many submissions about that already to this committee. But those costs are more acutely felt by workers who often do not have the financial means to be able to go and purchase a standard that may be several hundred dollars. We are deeply concerned about the reduced availability of information publicly, in particular, the fact that the WorkSafe library, a custodian of many standards, we now understand is facing funding cuts that will wind that library back to the point where it is no longer able to provide them. We also acknowledge that for those who live and work in remote and regional areas, they face particular difficulties in being able to access information.

I did want to also echo the submissions of the SDA, who you have heard from this morning, particularly in relation to how standards are not only used for workplace safety purposes but often workers are subject to them as part of their rights and obligations as an employee and, again, the prohibitively expensive nature of them makes it very difficult for workers. They spoke in their submission about the expense of standards relating to drug and alcohol. There are many other examples of workers' standards and the expense of them. One might be the fall-arrest system and devices, a really important safety standard, referenced in both legislation and codes of practice. The price to access that ranges from about \$188 through to about \$358. These are significantly expensive. These provide essential guidance to employers but also to employees and workplace health and safety reps on the safe way to go about their work. They are literally saving lives. It is quite simply wrong that those standards are not easily and freely available to the people who need them, in this case, not just employers but to workers as well.

I have already mentioned our concerns about proper access to the codes being further exacerbated by the funding cuts for the Department of Commerce and, in particular, WorkSafe where we have

been advised that they are reviewing resourcing to the WorkSafe library. We see this library as a really important community resource. Once that funding is cut and is gone, it will be very difficult to reinstate it as an important place where people are able to access information about workplace safety. That is notwithstanding the very practical difficulties that still exist, perhaps people working in remote and regional areas, even in the Perth metropolitan area. It is very difficult for a worker to be able to travel and access that information but at least it was available somewhere. So we are very conscious of the additional constraints that face those who live and work in regional and remote areas because even publicly available information in libraries really will go far enough to meet the needs of those people. In this technological age, I think there is very much an expectation that people be able to access this information freely over the internet and find it as and when they need it. Our concern, I guess, is that for many workers, many employees, who take on the role of a health and safety rep on top of their job—it is a role that they take on in addition to a normal work role—that the process of laying your hands on the appropriate standard is often just so complex and exhausting that many would give up before they got there. Although UnionsWA and affiliate unions provide support to work health and safety reps and would assist to guide them through the process, we are really mindful that many workplaces would have perhaps not necessarily union members being workplace reps or it may be that they are not aware that the union can provide that level of practical assistance. For many workers, our concern is that they would give up rather than find their way through the system to the appropriate standard that would provide them with the information that they need.

We really support the work of this committee and we want to endorse, I think, the initial recommendation that where the government requires departments, agencies and local governments, where they have these standards as part of the legislative framework, that really they should be able to provide information to where people can find that information freely and publicly available. We think that there needs to be maximum access to Australian Standards. We need to make sure that people are able to find the information they need, particularly in relation to health and safety, which we see as being not just a critical workplace issue but a critical issue for the community more broadly. That was really the end of the opening submission.

The CHAIR: Did you want to add to that, Tim?

Dr Dymond: No.

The CHAIR: Thank you. That is very helpful.

Hon ROBIN CHAPPLE: You talked about height arrest equipment. I am mindful that we have had a number of workers, especially the most recent one was the Ok Tedi mine where we had a guy fall there. Do you know if the coroner actually addresses whether workers who do suffer a fatal fall have been availed of the correct information? I know there is always the comment about the employer having instructed the individual but one wonders whether the individual has actually seen what is supposed to be height-arrest equipment provisions.

Ms Hammat: I could not comment specifically on the particular coroner's findings without going back and really having a look at the circumstances around particular cases. We would expect a normal investigation would take account of those things but how rigorously that is examined, I would not like to comment without having a look at that in some detail but I think it is a good question.

Ms S.F. McGURK: That statement was really useful but it just prompted me to think—you were talking about the support that was given to elective safety reps. In order to be properly recognised under the act, they undertake mandatory training. You would not happen to know if the standards are referenced in that training and if it is, are RTOs and training bodies then required to purchase the standards and under what arrangements are they then relayed to the students?

Ms Hammat: We do conduct some of the safety training for reps of that nature. We would use those standards as part of that by way of illustrating the interaction of standards with the laws. In terms of the access to them, we would access some of the standards as a branch of the ACTU.

[12.30 pm]

Dr Dymond: The ACTU is a licence holder of Australian Standards. I know from talking to them, they are very mindful of their responsibilities in that regard when it comes to how they allow copies to be viewed and all of those sorts of things. Of course, they have to keep tight control of the particular documents should a standard become relevant for a particular affiliate. In UnionsWA, if there was a situation in which an affiliate needed to get hold of a particular standard for a particular reason, they would obviously be part of the ACTU as well. We would tend to put them in touch directly, more or less, with the organisation. But, of course, as has been previously outlined, I guess in evidence before you, you can sort of look at the standard but you have to be mindful of not doing a shifty photocopy or anything like that. They do not do that. You basically have to look at the standard and then the people have to take what they can from that viewing, once again, being mindful that the licence only extends to a particular copy.

Hon ROBIN CHAPPLE: Would that be used for what I call a third party arrangement? You have a trainer who looks at the standard and then trains based on the standard rather than the individuals who are being trained actually seeing the standard?

Ms Hammat: Individuals who are trained would not have access to that standard to go back to their workplace and then use it on an ongoing basis. To that extent, it is an enormous gap in the system. Where they need the information is where they undertake those duties in the workplace, yet that is not necessarily available to them unless they are able to access it in another way, and I think that is part of the submission.

Ms S.F. McGURK: Tim was just talking then about the ACTU's access to the standards might be made available to affiliates but do you know if you purchase any of the standards as an RTO?

Ms Hammat: I would have to check.

Ms S.F. McGURK: It might be an important question for training providers.

Mr P. PAPALIA: This is kind of a repetition of questions that we posed to other organisations: do you have any idea how much of a contribution ACTU members, for instance, as a member organisation of Standards Australia, contribute to developing the standards that they then pay for later on?

Ms Hammat: I would not know without discussing that with them. We could get some information about that. I think the difficulty would be though that the ACTU as a peak body may do some things but there would be a wide network of working people, many of whom would be union members who would be contributing to the development of those standards across a broad range of industries, occupations and issues. We would simply be unable to quantify that. I think that is the difficulty.

Mr G.M. CASTRILLI: Just a point of clarification, Tim, you said the ACTU is a licence holder.

Dr Dymond: Yes.

Mr G.M. CASTRILLI: And UnionsWA is an affiliate. You cannot actually get hold of the printed copy from the ACTU. You can only view it, I suppose, or be told about it. Then there is that other problem, I suppose, of passing it on to your members here.

Dr Dymond: The simple truth is that you cannot just get a copy and then just pass it out to people for all the reasons that have been previously outlined. Really, there has to be what they call "document control" and the document control really has to be exercised quite responsibly and quite extensively. That is what the ACTU would need to do with basically all of its member bodies.

Hon ROBIN CHAPPLE: Just a clarification on that point. You cannot get a copy from the ACTU. You basically have to go over there and view it?

Ms Hammat: Unions that are members of us, UnionsWA locally, would also have national offices. That might be a more normal conduit perhaps for some of the information. But our concern is getting it to the workplace level. That is where it is critically needed. Often the several stages in the process would be a discouragement for a person on a shop floor somewhere who has a legitimate question maybe about guards on machinery. It is a long way to find your way to a copy of the Australian Standard, regardless of whether it might be held in a WorkSafe library or residing with the ACTU.

Hon ROBIN CHAPPLE: In some cases the transmission of information would not just go through one third party; it might be through several third parties by the time it gets to the workplace.

Ms Hammat: I think that is right.

Hon MARTIN PRITCHARD: I suppose the other thing is that it would be helpful for the site representative to have something in writing—a part of the code or whatever—to discuss with the employer.

Ms Hammat: Absolutely.

Hon MARTIN PRITCHARD: So it is not just a matter of the person just thinking it up; they have something in hard copy that they can show them and say, “This is what’s been breached and this is what needs to be resolved.”

Ms Hammat: That is exactly right. It provides a firm grounding for both those worker representatives but presumably it would be of assistance to the employers as well, many of whom may not have access to the standards that govern their operation. They may have similar problems in terms of being able to access them. It would be advantageous for both parties, I would think.

The CHAIR: Do you get many complaints from union members or organisers about the fact that they cannot access them, or is that something that is bubbling along under the surface?

Ms Hammat: I would take the view that it is bubbling along somewhat under the surface. Our concern would be that people do not know what they do not know. For many people who are in workplaces with legitimate questions about safety and machinery and work practices, they would be simply unaware, for the most part, about the difficulties of accessing the Australian Standards that govern their work. I think the earlier submission from the SDA made the point that many people are surprised to learn that Australian Standards are privately owned and so expensive to access. For someone who is doing all this on top of their normal job and may not be particularly literate at finding their way around a more complex system, I think they would drop out before they got to the answer and just fail to inform themselves about these important standards.

Hon MARTIN PRITCHARD: A further concern would be not being able to get or afford a formal copy; they will google something and take that as being the gospel when it may very well not be.

Ms Hammat: Or take no action at all, with potentially very serious consequences in some cases.

The CHAIR: In your submission, I recall you made a point about union health and safety reps not having access to the relevant standards or the updates. To what extent is that a practical problem on the ground and what are the issues around that for safety in general, I guess?

Ms Hammat: I think it is a real issue. Just by way of simple illustration, a health and safety rep who perhaps has a question about wanting to inquire into the appropriate guards on high-risk machinery, for example. If they contact WorkSafe, they would be referred back to the manufacturer’s guidelines for that machinery. For the most part, those guidelines refer quite extensively to standards, and probably not just one. There might be a number of standards that are referenced in that and, again, the person is no further progressed in how to get their hands on that standard. By way of further example—I apologise that we have not made copies for the committee,

but I am happy to do that—this is a checklist and information for heavy machinery scaffolding hire from WorkSafe, so a safety note. It references eight Australian Standards in relation to scaffolding, and they are saying it must meet those Australian Standards. You can see that for work health and safety reps, it is not just a question of having to access one standard that might then contain everything that is relevant to that worksite; there could be dozens of standards that are appropriate and very difficult then to find your way through them.

Hon ROBIN CHAPPLE: Can we get a copy of the document you have just referred to?

Ms Hammat: Yes, I apologise for not having made copies prior to coming here.

Mr G.M. CASTRILLI: In practical terms, if I am out in the field and as a worker wanted to know about the standards for a safety guard on a piece of machinery, he or she would have to go to their immediate supervisor, and the immediate supervisor would then go to, I suppose, the union here in WA. Then the union in WA may or may not contact UnionsWA, which then might go to the peak national body, which then has to go to the ACTU to see what the standard is. Verbally it gets translated all the way down the line. That is in a practical sense, which then might lose that whole—as we all know, we start with a piece of information and end up down the line and it might be a bit different.

Ms Hammat: We endorse the comments from the earlier submission from the SDA that being able to reproduce the most relevant sections would probably go a long way to perhaps resolving some of those issues—not all of them. Our submission is also that this material should be freely available and easily and readily available because for issues of safety, it is not always the case that that can wait.

Hon ROBIN CHAPPLE: It may not even be just safety in what I call the immediate personnel, but constructing something. If you put a Nyloc bolt on one side, it might have a different vibration rate to the other side. The standards establish that, but if you do not know, you are going to put the bolt on anyway you think. The implication might be six months down the track.

Ms Hammat: Correct. We have a particular interest in worker safety, but it is clear to see that situations where workers might be at risk can easily translate into situations where the community at large is at risk.

Ms S.F. McGURK: These are things that occur, as we hear evidence, so I am not sure whether you can help. I do not know whether you have had experience reading any of those standards, but once those health and safety reps do access the standards, do you know if they are easily understood? Do you have any sense of that?

Ms Hammat: That is a good question. I would really probably have to explore that specifically and I suspect the answer to it lies in the experience of that individual and perhaps the complexity of the standard as it relates in their workplace. The concern being that if it is not readily and easily understood, it does not then provide the guidance that that person needs in any event to be able to do what it is that they need to do.

The CHAIR: Any further questions? Do you want to say anything else?

Ms Hammat: No; that was all, thank you.

The CHAIR: Thank you very much, you have been most helpful. Thanks, Tim and Meredith, much appreciated. The transcript will be sent to you and the covering letter will indicate how many days you have to return it. If you do not return it, we will assume it is correct, but it gives you the opportunity to make any corrections.

Hearing concluded at 12.41 pm
