

**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 THREE

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 11.24 am**Mr BRAD JOLLY****Executive Director, Sector Regulation and Support, Department of Local Government and Communities, sworn and examined:****Ms MARY ADAM****Director, Legislation and Statutory Support, Department of Local Government and Communities, sworn and examined:**

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or the 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. The 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 try to talk into them. Ensure that you do not cover them with papers or make too much noise near the microphones as that makes it difficult for Hansard. 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 or do you want us to start with questions?

Mr Jolly: If I may, I might just make a point at the outset: both Mary and I are recovering from head colds, so please bear with us if we take a little bit of time.

Hon MARK LEWIS: I know how you feel!

The CHAIR: Did you want to make an opening statement at all?

Mr Jolly: No; we are fine. Thank you.

The CHAIR: The overarching issue for our inquiry is the availability of Australian Standards when they are referred to in secondary legislation, because we believe that when we make laws, they should be freely available for people to access. A lot of secondary legislation has reference to Australian Standards and that creates some issues, so that is really what it is all about. To what extent does your department provide advice to staff or agencies in your portfolio and local governments to alternatives to referencing standards in secondary legislation?

Mr Jolly: I should perhaps make the point, as the committee is no doubt aware, that the department has, I guess, two sets of responsibilities. One is in relation to the legislation that it is directly responsible for administering, and then also in relation to its role with local governments and the

local laws. The response I will provide is primarily in relation to the latter; that is to say that with regards to local governments making local laws, we do not provide local governments with advice on referencing standards. Our focus, in reviewing local laws that are submitted to the department, is on legal and drafting issues. We provide that comment back to the local governments. Of course, they are under no obligation to take that feedback into consideration, but we provide it nonetheless.

The CHAIR: The Productivity Commission report in 2006 recommended that impact assessments be carried out by departments and agencies before standards were adopted in legislation, so the cost of accessing those standards was taken into account. Is there anything along that line with the department; or because you do not really address that issue with local government, is that kind of off the radar?

Mr Jolly: Again, going back to my earlier comments, certainly in relation to the legislation that the department is directly responsible for, any amendments that are made to that legislation undergoes an impact assessment in keeping with the state's regulatory gatekeeping practices. But certainly in relation to the local laws adopted by local governments, no, we do not provide that direction or we do not undertake that impact assessment of local laws on behalf of local governments.

Hon ROBIN CHAPPLE: You have no particular need to access standards yourselves in the department; you just make sure that the relevant standard is referred to in a local law-making capacity?

Mr Jolly: In relation to local laws?

Hon ROBIN CHAPPLE: Yes.

Mr Jolly: No, we do not require the local government to provide us with a copy of the local law. We would, as I think —

Ms Adam: Of the standard.

Mr Jolly: Sorry; of the standard. As was, I think, noted in the department's submission where we identified that the local government references a standard in their local law, we would provide advice to the local government to make that standard available

Hon ROBIN CHAPPLE: Do you check that standard?

Mr Jolly: No, we do not.

Hon ROBIN CHAPPLE: You have no access to standards? There is no cost to the department in accessing standards?

Mr Jolly: No cost in so far as we do not seek to obtain them.

The CHAIR: In a sense, your department does not really need access to the standards.

Mr Jolly: No. As I say, when we review local laws, the focus is really on the legal and drafting issues.

Hon ROBIN CHAPPLE: If they quoted the wrong standard, you would not know about it?

Mr Jolly: No, we would not detect that.

The CHAIR: We will leave that to our committee!

Hon ROBIN CHAPPLE: We do that!

The CHAIR: Do you have any indication of the costs statewide of all our local governments in providing the community access to the standards that they do reference? Is there any indication of that at all available?

Mr Jolly: No, we do not. I think, as was noted in our submission, we do not keep a record of instances in which local laws reference Australian Standards, but I think we did observe that during the course of the 2014 calendar year, about a quarter of those local laws that we reviewed were

referencing standards. To what degree and to what extent that might place an obligation on the local government in terms of cost for access, we could not say.

The CHAIR: Fair enough. It would be quite a difficult exercise to pull that one together.

Do you have any suggestions for the committee to consider regarding greater access to standards, or because you are not working with them, is it not really an issue that you have contended with?

Mr Jolly: No, we do not. Again, it is very much up to the individual local governments, other than I would observe that most local governments provide a library service as part of the service to the community, so I would imagine to some extent that access is granted through those arrangements.

Hon MARTIN PRITCHARD: You mentioned about a quarter of submissions you get reference requiring a code. Can you give me an idea of the full number that you would do in a year so that I can get an idea of what a quarter is?

Mr Jolly: Yes. It varies, but I think, certainly in our submission, we identified that over the course of the 2014 year we reviewed approximately 100 local laws.

The CHAIR: In terms of councils referencing Australian Standards in their secondary legislation, you obviously recommend that they have them available for the public, or is it actually a requirement?

Mr Jolly: No, it is not a requirement. The department does not have the power to compel local governments to do that. It is provided as advice.

The CHAIR: It is more up to the goodwill of the local government as to whether they make that available?

Mr Jolly: Correct.

Hon MARK LEWIS: What would the department's view be in having the power to determine how much referencing there is of ASAs?

Mr Jolly: To determine what our view would be—I am not sure —

Hon MARK LEWIS: What would the department's view be on the minister having the power to determine how much referencing of ASAs is in local laws?

Mr Jolly: I am not sure that that is a matter that we have considered up to this point. My initial reaction is that it would be somewhat at odds with the powers of general competence that are granted to local governments under the legislative scheme. Local governments are empowered to do any or all things necessary to provide for good government within their district other than to the extent that it is prohibited by a law. It would probably be, on the face of it, at odds with that principle.

The CHAIR: Some government departments tell us that they instruct their staff not to use Australian Standards in regulations unless it is absolutely necessary. I assume that local governments seek advice from your department when they are formulating their local laws. Would that be something that you would encourage?

Mr Jolly: I think probably the nature of the contact between local governments and the department would be perhaps better described as they provide us with a copy of what they propose to submit. It is pretty well already done and we simply run the ruler over it, as I say, from a —

The CHAIR: So the horse has bolted.

Mr Jolly: Yes.

Hon MARK LEWIS: The department does not have a view on how much referencing of ASAs; whether they should or not is another issue for us.

The CHAIR: Yes. It would seem from your responses that your department actually does not interact that much with the Australian Standards?

Mr Jolly: No. As I say, other than for a small number of instances in which it is referenced in regulations for which we are directly responsible—I think the Dog Regulations, the Cat Regulations, the Control of Vehicles (Off-road Areas) Regulations and the Caravan Parks and Camping Grounds Regulations. Of those four, it is most comprehensively referenced within the Caravan Parks and Camping Grounds Regulations, but I would just add that the primary legislation and regulations for that particular act are currently the subject of a review. The government has announced, as part of its review, its intention to repeal that act and regulations, and replace it with a much less prescriptive set of arrangements. I would expect that perhaps as a consequence of that, that will perhaps fall by the wayside to some degree.

The CHAIR: That has been very brief. Thank you very much for appearing before us. As indicated, the transcript will be sent to you and the time frame will be in the covering letter in terms of by when you need to return it. Thank you very much for appearing before us.

Hearing concluded at 11.37 am
