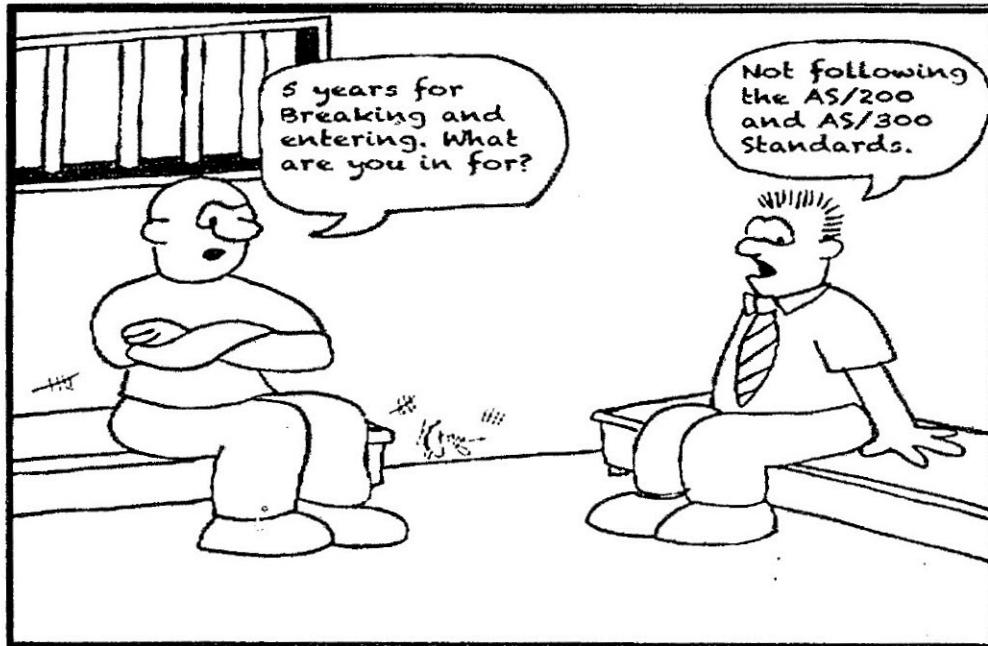


Standards



- 3.3 The Committee remains concerned about issues arising from delegated legislation adopting (or, as it is usually termed, 'calling up') standards published by Standards Australia.⁶
- 3.4 The Committee continues to consider many instruments which call up the standards of Standards Australia.⁷ The Committee appreciates that the purpose of adopting a standard is often to provide technical detail not appropriate for legislation.
- 3.5 The Committee is concerned about its capacity to scrutinise the law when, through delegated instruments, a further delegation occurs in the calling up of standards. The Committee questions whether it is Parliament's intention to provide this level of scrutiny.⁸ Committee concerns are compounded when a standard calls up a number of further standards and documents.⁹

⁶ While standards are usually called up in regulations, the Committee's comments in this section also apply to local laws and other subsidiary legislation that calls up standards.

⁷ Standards Australia is the nation's peak non-government standards organisation. The prevalence of standards in Australia is indicated by the fact that as at 30 June 2011 there were 6 873 standards (and 1 346 standard amendments) and 252 standards and related documents were produced in 2010-11: Standards Australia, *Annual Review 2011*, p9.

⁸ The Committee does not scrutinise standards. The Committee is not provided with access to or a copy of standards called up in subsidiary legislation.

⁹ For example, it has been noted that the *Building Code of Australia* calls up over 700 documents including standards made by Standards Australia, International Standards, American Society for Testing and Materials Standards, CSIRO standards and industry-based documents: Productivity Commission of Australia, *Reform of Building Regulations*, Research Report, 17 November 2004, pp256 and 260 (referring to the submission of the Australian Building Code Board).

- 3.6 It is an important principle that people have a right to know the law that they are obliged to comply with.
- 3.7 The Committee is concerned that it is difficult for people to access the full content of the law when standards are called up in delegated legislation due to the limited access to standards and the cost of purchasing standards. Unlike the free online access to State Acts and subsidiary legislation provided by the State Law Publisher, access to Standards Australia documents may require the payment of significant amounts of money.
- 3.8 Also, subsidiary legislation may call up a standard as it applies from time to time. In these circumstances, public access to the current standard is important. In these circumstances, the subsidiary legislation calls up as law future amendments to the standard that the drafter of the subsidiary instrument may not be aware of when subsidiary legislation is published.
- 3.9 The Committee asks government departments, agencies and local governments how they notify the public about how they can access called up standards. The Committee's experience indicates that the public is not being provided with information on how to access standards.
- 3.10 The Committee is aware that the State Library of Western Australia provides the public with free access to Standards Australia documents,¹⁰ WorkSafe (Department of Commerce) provides a free access service¹¹ and local government public libraries provide access to selected standards. The Committee is concerned that the public may not be aware of these methods of accessing standards.

Recommendation 1: The Committee recommends that the Government requires departments, agencies and local governments to advise on their internet site where standards called up in subsidiary legislation can be accessed at no cost.

- 3.11 It would also assist the Committee if departments, agencies and local governments advised the committee in their delegated legislation explanatory memorandum where on their internet site they advise the public where standards called up in the delegated legislation can be accessed.

¹⁰ The State Library of Western Australia pays an online subscription to Standards Australia and provides free public access to the standards on-site through the use of library computers and access to a hard copy of selected standards. See <http://www.slwa.wa.gov.au/find/collections/standards>.

¹¹ WorkSafe, Department of Commerce, provides free public access to the standards on-site through the use of library computers and access to a hard copy of standards called up in relevant subsidiary legislation. See <http://www.commerce.wa.gov.au/worksafe/Content/Services/Library/Library.html>.