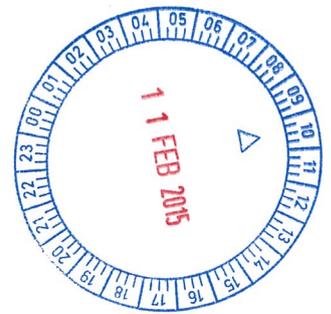




ATTORNEY-GENERAL  
MINISTER FOR JUSTICE



Parliament House  
State Square  
Darwin NT 0800  
minister.elferink@nt.gov.au

GPO Box 3146  
Darwin NT 0801  
Telephone: 08 8928 6615  
Facsimile: 08 8928 6590

Mr Peter Abetz MLA  
Chairman  
Joint Standing Committee on Delegated Legislation  
Parliament House  
PERTH WA 6000

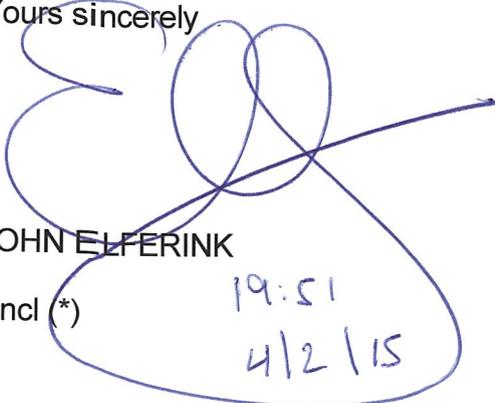
Dear Mr Abetz

I refer to your letter to the Chief Minister of the Northern Territory, the Hon Adam Giles MLA, dated 4 December 2014, regarding the Western Australian 'Inquiry into access to Australian Standards adopted in delegated legislation'. Following receipt, the Chief Minister forwarded your request to my office to respond.

Please find enclosed (\*) a submission addressing each of the questions posed in your correspondence.

I note one of the primary principles of the rule of law is that the law must be both readily known and available. The investigation conducted by the Department of the Attorney-General and Justice, in preparing a response to your correspondence, has identified some significant problems with the accessibility of Australian Standards adopted in delegated legislation in the Northern Territory. Accordingly, I am keen to monitor the outcome of your Inquiry and consider how its recommendations might also apply in the Northern Territory.

Yours sincerely



JOHN ELFERINK

Encl (\*)

19:51  
4/2/15

## **CURRENT SITUATION IN THE NORTHERN TERRITORY:**

### **1. Does your government have any understanding or agreement with Standards Australia or SAI Global relating to Government agencies, the Parliament or public access to Australian Standards?**

Various government agencies in the Northern Territory have subscriptions to the Australian Standards database via SAI Global and are thus bound by agreements that specify terms of access. There is no general understanding or agreement between the Northern Territory Government and Standards Australia or SAI Global relating to Government agencies, Parliament or public access to Australian Standards.

### **2. Does the issue of access to Australian Standards fall within the responsibility of one government agency?**

There is no central agency in the Northern Territory responsible for facilitating access to adopted standards. Rather, this responsibility lies with whichever agency has administrative responsibility for the legislation that references the standard.

For example, regulation 5 of the NT Swimming Pool Safety Regulations adopts Australian Standard (AS) 1926.1-1993 (Swimming pool safety Part 1: Fencing for swimming pools) and AS 1926.2-1995 (Swimming pool safety Part 2: Location of fencing for private swimming pools). The NT Department of Lands, Planning and the Environment is responsible for administering the NT *Swimming Pool Safety Act* and is thus responsible for facilitating public access to the above standards. The responsibility to provide public access to the relevant standards is contained in section 10(2) of the *Swimming Pool Safety Act*:

#### **10 Modified Australian Standard**

...

(2) The Authority must ensure that copies of the following are made available for viewing by members of the public:

- (a) diagrams illustrating how subsection (1)(a)(i) and (ii) may be applied;
- (b) the standards prescribed under subsection (1)(a)(iii).

The Department of Lands, Planning and the Environment fulfils this requirement by making hard copies of the relevant standards available for viewing at their office.

A number of Australian Standards have also been adopted in the NT Work Health and Safety (National Uniform Legislation) Regulations. Under regulation 163, 'a person conducting a business or undertaking that includes the carrying out of construction work must comply with AS/NZS 3012:2010 (Electrical installations – Construction and demolition sites)'. Non-compliance incurs a penalty of \$6,000 (in the case of an individual) and \$30,000 (in the case of a body corporate). The NT Department of Business is responsible for administering the NT *Work Health and Safety (National Uniform Legislation) Act* and is thus responsible for facilitating public access to these standards. In the Northern Territory, access to these Australian Standards is facilitated by NT WorkSafe, a division of the NT Department of

Business. Unlike the *Swimming Pool Safety Act*, the *Work Health and Safety (National Uniform Legislation) Act* does not address access to Australian Standards. NT WorkSafe, however, allows members of the public to view the relevant standards on a computer or in hard copy at their office.

**3. Is it known how many Australian standards are adopted in delegated legislation in NT? If no, is it common practice to adopt Australia Standards in delegated legislation in your jurisdiction?**

No. Given that there is no central agency responsible for administering Australian Standards in the Northern Territory, the precise number of adopted standards is unclear. The Australian Standards referred to in this response provide some examples of Australian Standards adopted by NT legislation, rather than an exhaustive list.

While it appears that a number of Australian Standards have been adopted in NT delegated legislation, NT legislation also adopts standards developed by other national and territory bodies. To provide an example, the NT *Food Act* adopts the Australia New Zealand Food Standards Code. This Code is developed by Food Standards Australia New Zealand (FSANZ), an independent statutory agency which is different to Standards Australia.

**4. What provisions in legislation authorise Australian Standards to be adopted in delegated legislation?**

There is no specific general legislation in the Northern Territory to facilitate the adoption of and access to Australian Standards. Rather, provisions relating to the adoption of Australian Standards can be found in various NT Acts. Sometimes these provisions are drafted into the regulation making powers provision of an Act but this is not always the case. Furthermore, the provisions that do authorise the adoption of Australian Standards in delegated legislation rarely specify that the standard is to be an Australian Standard. The more general term 'standard' is usually used.

Some examples of provisions in NT legislation that authorise Australian Standards to be adopted in delegated legislation include:

Section 53 of the NT *Traffic Act*:

**53 Regulations**

...

(3) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether:

- (a) wholly or partly, or as amended by the Regulations; or
- (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
- (c) as amended after the making of the Regulations, but only where the Director has published in the Gazette a notice that the particular amendment is to be incorporated in the Regulations.

Section 102 of the NT *Public and Environmental Health Act*:

### **102 Standards**

(1) The Minister may, by Gazette notice, declare a document applies, whether as in force or existing at a particular time or from time to time, as a standard in the Territory or a stated part of the Territory relating to a declared activity or another matter under this Act.

...

(3) The standard may apply, adopt or incorporate (with or without changes) a matter contained in another document or instrument as in force or existing at a particular time or from time to time.

Section 27A of the NT *Fire and Emergency Act*:

### **27A Certain buildings to be inspected regularly**

(1) The Regulations may prescribe a class or classes of buildings that, because of the nature of their use or intended use, are to be inspected regularly by the Director or an authorised person to ensure that:

- (a) the requirements of any law in force in the Territory; and
- (b) the standards imposed by any Australian Standard as in force from time to time;

in relation to fire safety are met and continue to be met and that persons who work in any such building are trained in essential fire safety.

(2) The Regulations may provide for obligations of the owner or occupier of a building or a class of building prescribed under subsection (1) in relation to safety in a fire or other emergency.

## **5. What legislation, if any, relates to or improves access to Australian Standards?**

There is no specific legislation in the Northern Territory that relates to or improves access to Australian Standards. However, a provision which addresses the accessibility of the adopted standards is sometimes included in the relevant Act or regulations.

For example, section 103 of the NT *Public and Environmental Health Act* states that:

### **103 Inspection and purchase of copies of guidelines, standards and related documents**

The CHO [Chief Health Officer]:

- (a) must make available copies of guidelines for inspection or purchase by members of the public at the place stated for the purpose under section 101(5)(c); and

- (b) must make available copies of standards for inspection or purchase by members of the public at the place stated for the purpose under section 102(4)(c); and
- (c) must make available for inspection by members of the public at the same place copies of all documents applied, adopted or incorporated in the guidelines and standards; and
- (d) may charge and receive from a person a reasonable fee for the purchase of a copy of a guideline or standard.

**6. What other measures, if any, have been taken to improve access to Australian Standards?**

As mentioned above, some Acts include specific provisions which directly address the issue of access. These provisions improve access to Australian Standards by ensuring the public can view them free of charge and by clarifying who is responsible for providing access.

From 1 May 2015, the National Construction Code will be freely accessible to the public through the Australian Building Codes Board website. The National Construction Code adopts a number of Australian Standards and its provisions are mandated in the Northern Territory by the Building Regulations. Online access to the National Construction Code improves access to these Australian Standards, although it should be noted that the National Construction Code paraphrases rather than reproduces the standards and the issue of access to the actual standards remains.

**7. Are explanatory materials to delegated legislation required to refer to Australian Standards adopted in legislation or is the agency required to provide a copy of the adopted standard to the Parliament or a committee of the Parliament to aid in the scrutiny of the legislation?**

There is no formal requirement for explanatory materials to delegated legislation to refer to Australian Standards adopted in legislation or for an agency to provide a copy of the adopted standard to Parliament to aid in the scrutiny of the legislation.

Accordingly, the decision to provide a copy of the relevant standard would rest with the agency responsible for that legislation.

**8. How and where are Australian Standards adopted in delegated legislation made available to the public? What level of public access is available at your state library and public libraries? Is access free or do charges apply?**

A number of Northern Territory Government agencies hold limited subscriptions which provide for access to Australian Standards adopted in legislation under their administration. However, in most cases, the subscriptions limit copying and provision of the Standards to the general public.

Some agencies provide public access to physical copies of the Australian Standards adopted in their delegated legislation. For example, as noted above, the Australian

Standards adopted in the NT Swimming Pool Safety Regulations can be viewed by the public at the office of the Swimming Pool Fencing Unit of the NT Department of Lands, Planning and the Environment and the Australian Standards adopted in the NT Work Health and Safety (National Uniform Legislation) Regulations are available for viewing at the NT WorkSafe office.

In both these cases, a copy of the Standards is made available to the public for viewing, upon request. However, copies cannot be made for members of the public to keep and if a member of the public wishes to retain a copy for themselves, their only option is to purchase a copy through SAI Global.

Not all government agencies provide public access to the Australian Standards adopted in their delegated legislation. For example, although a range of Australian Standards have been adopted in the NT Fire and Emergency Regulations, these standards are not made available for public viewing through any Fire and Emergency Services building or website. Similarly, although a range of Australian Standards have been adopted in the NT Traffic Regulations, no public access to these standards has been facilitated by the NT Department of Transport. The only way for a member of the public to access these standards is to purchase them through SAI Global.

Previously, the Northern Territory Library had a subscription to the Australian Standards database which helped to facilitate public access to these documents, however, this subscription was cancelled for financial reasons. When the subscription was current, access was free to the public although access was restricted to one person at a time and only one page could be printed or saved each time. The Library still has a number of Australian Standards in hard copy, though these are now outdated.

The Charles Darwin University Library has a current subscription to the Australian Standards database but access is restricted to university staff and students.

**9. Do government agencies provide access to Australian Standards to the public at their offices or their libraries? Is access free or do charges apply?**

As mentioned above, some government agencies provide access to Australian Standards to the public at their offices but this is not always the case. When Standards are made available for public viewing at agency offices, access is free.

**10. Are you aware of any government report or report of the Parliament dealing with the issue of access to Australian standards? Provide details.**

No. There is no Northern Territory Government or Parliamentary report dealing with the issue of access to Australian Standards.