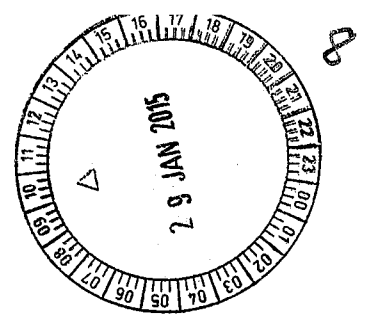




Government of **Western Australia**
Department of **Commerce**
Office of the **Director General**



Your Ref: ASA
Our Ref: A10562270 (DP0025/2015)
Enquiries: John Donovan Ph:62511708

15 January 2015

Mr Peter Abetz MLA
Chairman
Standing Committee on Delegated Legislation
Parliament of Western Australia
PERTH WA 6000

Dear Mr Abetz

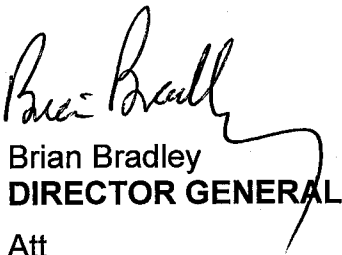
**INQUIRY INTO ACCESS TO AUSTRALIAN STANDARDS ADOPTED IN
DELEGATED LEGISLATION**

Thank you for your invitation of 4 December 2014 to provide a submission to the Joint Standing Committee on Delegated Legislation (the Committee) regarding the above inquiry.

The Department of Commerce (the Department) appreciates the opportunity to assist the Committee with its considerations. The Department has elected to respond to the questions and information requests outlined in the above letter, rather than make a full submission. The response to these is attached to this letter. Please do not hesitate to contact myself if further information is required.

Once again, thank you for the opportunity to assist the Committee.

Yours sincerely


Brian Bradley
DIRECTOR GENERAL
Att

Joint Standing Committee on Delegated Legislation
Inquiry into access to Australian Standards adopted in delegated
legislation

Response to questions and requests for information

Submitted by the Department of Commerce

15 January 2015

Introduction

The Department of Commerce provides the following response to the questions and information requests outlined in the letter dated 4 December 2014 from the Joint Standing Committee on Delegated Legislation ('the Committee').

Responses in relation to inquiry's terms of reference

41. the level of free public access to adopt Australian Standards in metropolitan and regional Western Australia;

Access to the Australian Standards is available for free by attending the Department of Commerce library at its Cannington location where the main divisions which administer laws citing the Australian Standards are located; the Building Commission, EnergySafety and WorkSafe. Consumer Protection product safety standards may also be obtained through the library.

This library is publicly accessible Monday to Friday where the librarian is able to assist with access to current version of the Australian Standards online through a subscription purchased by the Department of Commerce. The Department of Commerce librarian can also assist with access to historic hard copies of some Australian Standards which we hold.

Consequently, the Department of Commerce library provides free access to the Australian Standards to those who can travel to its Cannington Office library.

SAI Global, the entity holding the copyright to the Australian Standards, advise via their customer service enquiry line that they assist the general public by advising them that the standards although not downloadable, are currently made available free of charge for public reference purposes through public libraries in each State and Territory, and for student reference purposes in many tertiary education institutions. In addition, for the general public should they have a court issue they refer them to their copyright area that provide them with the relevant section of the Standards.

This would appear to provide some free access in regional areas but I would note that it has been provided for limited purposes and would not appear to have been made available for the purpose of legislative compliance.

42. whether amendments to legislation are required to improve public access to adopted Australian Standards;

As noted above, the Australian Standards are currently subject to copyright held by SAI Global. Consequently, the only amendment to legislation that would be effective in relation to this matter would be for the Commonwealth to amend the *Copyright Act 1968*.

Any amendments to Western Australian legislation to improve public access to Australian Standards would be in conflict with the Commonwealth's *Copyright Act 1968*. The consequence would be that section 109 of the Constitution of Australia would ensure that the *Copyright Act 1968* would take precedence

It is anticipated that any approach to the Commonwealth concerning the amendment of the *Copyright Act 1968* would be subject to significant resistance by SAI Global due to the likely impact on their profitability.

The Department of Commerce is also aware that National Electrical & Communications Association (NECA) provides standards free to members. Master Electricians Australia offers a free technical advisory service to its members, which presumably includes any standards-related queries. This means many, but not all, electrical contractors and their employed electricians have ready access to standards relevant to their businesses. Non-members of NECA and MEA, which includes most sole-trader contractors, must continue to purchase the latest versions of such standards. The cost is a tax deduction. EnergySafety has never received any complaints about this need to buy standards.

43. other measures to improve access to adopted Australian Standards;

One possible approach would be for the WA Government to fund the State Library to obtain a number of public access licences to the Australian Standards and to consider mechanisms by which those in regional centres could gain access to that facility.

Another alternative would be for an approach to be made to SAI Global concerning the scope for them to offer minor amendments to Australian Standards as a free 'upgrade' for electronic versions. It is worth noting in this respect, that numerous stakeholders (e.g. Electricians) keep copies of the Australian Standards on mobile devices in their work vehicles. Such an approach would allow users of the Australian Standards to maintain currency at reduced cost.

44. measures to improve access to adopted Australian standards provided to the Joint Standing Committee on Delegated Legislation; and

No additional comment.

45. any other related matters that arise during the course of the inquiry.

The need to access Australian Standards is partially driven by the need to attain legal compliance. Consequently, a mechanism for reducing the community concern about freedom of access to the standards is to reduce, as far as

practicable, the reliance on Australian Standards when drafting delegated legislation. However, the wholesale adoption of such an approach would likely require significant legislative amendment.

By way of example, this is the approach that has been adopted with the model Work Health and Safety ('WHS') laws. The WHS laws have specifically been designed to minimise, as far as possible, the citation of Australian Standards and thereby provide clarity and certainty about compliance requirements.

On 23 October 2014 the Minister for Commerce, the Hon Michael Mischin, tabled a modified version of the model WHS Bill as a green Bill for community feedback until 30 January 2015. The Minister advised during the tabling of the Green Bill that he is looking to identify 'the most suitable legislation for the WA working environment' as a result of this process. The Minister also stated that the current process would allow the government to 'determine whether to enhance the existing legislation by adopting some of the provisions of the model WHS laws or move to a variant of the proposed bill'. That process will allow further consideration of the manner in which Australian Standards are utilised within the Western Australian framework.

However, it must be noted that such an approach is unlikely to be universally adoptable. There are some areas of regulations, such as consumer protection, electricity, gas, plumbing and building which will always need to rely heavily on citation of Australian Standards to ensure consistency of high quality service delivery. Product safety standards for consumer protection are also adopted nationally and so reference to Australian Standards ensures consistency across jurisdictions.